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15.96

THE Attorney's Practice IN THE Court of Common Pleas:

OR, AN

INTRODUCTION

TO THE

Knowledge of the Practice of that Court, as it now ſtands on the Regulation of ſeveral late acts of Parliament, Rules and Determinations of the ſaid Court:

WITH

Variety of uſeful and curious Precedents in *Engliſh*, drawn or peruſed by Counſel; and a Complete INDEX to the Whole.

By the Author of *The Attorney's Practice in the Court of King's Bench.*

The **Third Edition,** with large **Additions.**

In TWO VOLUMES.

VOL. II.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's moſt Excellent Majeſty; for D. BROWNE, J. SHUCKBURGH, T. OSBORNE, J. WORRALL, G. HAWKINS, T. TRYE, J. RIVINGTON, W. OWEN, S. CROWDER, J. JOHNSTON, P. DAVEY and B. LAW, and J. RICHARDSON, 1758.

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BRITANNICVM

THE

Attorney's Practice

IN THE

Court of Common Pleas.

Abatement.

AND the ſaid *E.* in her proper perſon cometh and defendeth the force and injury, *&c.* And prayeth judgment of the ſaid writ, becauſe ſhe ſaith, that ſhe on the day of ſuing out the ſaid original writ of the ſaid *R.* was under cover of one *W. J.* then and yet her huſband, and alive, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; And this ſhe is ready to verify: Wherefore for that the ſaid *W. J.* is not named in the ſaid writ, the ſaid *E.* prayeth judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.* *Plea in abatement, defendant under coverture at the time of the writ.*

And the ſaid *R.* ſaith, that for the reaſon before alledged his ſaid writ ought not to be quaſhed, becauſe he ſaith, that the ſaid *E.* on the day of ſuing out the ſaid original writ *Replication.*

of the ſaid *R. to wit*, on the 1ſt day of *February* in the —— year, *&c.* at *London* aforeſaid, in the pariſh and ward aforeſaid, was ſole, *Without this*, that the ſaid *E.* on the day of ſuing out the ſaid original writ of the ſaid *R.* was under cover of the ſaid *W. J.* as her huſband, as the ſaid *E.* hath above alledged: And this he is ready to verify: Wherefore for that the ſaid *E.* doth not deny the ſaid action of the ſaid *R.* the ſaid *R.* prayeth judgment and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Traverſe.

Rejoinder.

And the ſaid *E.* as at firſt ſaith, that ſhe on the day of ſuing out the ſaid original writ of the ſaid *R.* was under cover of the ſaid *W.* as her huſband, as ſhe the ſaid *E.* hath above alledged; and of this ſhe putteth herſelf upon the country; *And* the ſaid *R.* likewiſe, *&c. Therefore* it is commanded to the ſheriff that he cauſe to come, *&c.*

Iſſue.

Another executor, not named in the writ.

And the ſaid *R.* by *R. R.* his attorney, cometh and defendeth the force, *&c.* And prayeth judgment of the ſaid writ, becauſe he ſaith, that the ſaid *C.* in his life-time conſtituted and appointed him the ſaid *R.* and one *W. C.* to be executors of his teſtament, and afterwards died, after whoſe death the ſaid *W.* as executor of the teſtament of the ſaid *C.* adminiſtered divers goods and chattels which were of the ſaid *C.* at the time of his death, *to wit*, at *Weſtminſter* in the county of *Middleſex* aforeſaid, which ſaid *W.* at *Weſtminſter* aforeſaid is ſtill in being and alive; and this the ſaid *R.* is ready to verify:

verify: Wherefore for that the ſaid *W.* is not named in the writ aforeſaid, the ſaid *R.* prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.*

And the ſaid *T.* ſaith, that for the reaſon before alledged his ſaid writ ought not to be quaſhed, becauſe he ſaith, that the ſaid *W.* after the death of the ſaid *C.* as executor of the teſtament of the ſaid *C.* never adminiſtered any goods or chattels which were of the ſaid *C.* at the time of his death; and this he prayeth, *&c.* *Replication.*

And now at this day, *to wit*, *Friday* next after the morrow of the holy *Trinity*, in this ſame term, to which day the ſaid *P. D.* had leave to imparl to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *Weſtminſter* cometh as well the ſaid *E. P.* by his ſaid attorney, as the ſaid *P.* by *J. G.* his attorney, and the ſaid *P.* defendeth the force and injury when, *&c.* And prayeth oyer of the ſaid writing; and it is read to him in theſe words, *to wit*, To all, *&c.* Which being read and heard, the ſaid *P.* prayeth judgment of the ſaid bill now exhibited againſt him, becauſe he ſaith, that in the ſaid bill there is material variance between the ſaid bill and the ſaid writing upon which the ſaid declaration is founded, as to the court here ſufficiently appeareth; and this he is ready to verify: Wherefore for that variance the ſaid *P.* prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.* *Imparlance.* *Oyer.* *Plea in abatement, variance between the declaration and deed.*

Plea in abatement in caſe ſur aſſumpſit, defendant infra ætatem.

And the ſaid *W.* in his proper perſon cometh and defendeth the force and injury above laid to his charge, and prayeth judgment of the ſaid writ, becauſe he ſaith, that he the ſaid *W.* now is within the age of 21 years, (that is to ſay) of the age of 18 years, and no more, and was at that age, and no more, at the time of making thoſe promiſes and undertakings, as by the aboveſaid declaration of the ſaid *T.* in manner and form aforeſaid is declared: Wherefore the ſaid *W.* prayeth judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.*

Replication for neceſſaries.

And the ſaid *T.* ſaith, he ought not to be precluded from his ſaid action againſt him the ſaid *W.* becauſe he ſaith, that the ſaid money ſo paid, laid out and expended, and the ſaid ſeveral buſineſſes by him the ſaid *T.* done and performed for the ſaid *W.* was neceſſarily paid, laid out, expended, done and performed for the neceſſary uſe and benefit of the ſaid *W.* and in no other manner, as in the declaration of him the ſaid *T.* in manner and form as above is declared: And this he prayeth may be inquired of by the country, *&c.*

Plea in abatement, miſnomer in the defendant's chriſtian name. C. B.

And John S. againſt whom the writ aforeſaid iſſued by the name of *T. S.* in his proper perſon cometh and ſaith, that he was baptized by the name of *John*, and at the time of the ſaid *A.*'s ſuing out the ſaid original writ was, and always before and ſince hath been called and known by the ſaid name of *John S.* that is to ſay, at *W.* aforeſaid in the county of *M.* aforeſaid; *without that*, that

that he at the time of the ſaid *A.*'s ſuing out his ſaid original writ, or any time before or ſince, hath been or now is called by the name of *Thomas S.* as by the ſaid writ is above ſuppoſed; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.* *W. Chapple.*

Plea in abatement, miſnomer in the defendant's chriſtian name, B. R. Lill. Ent. 6. Pract. Reg. 199. Carth. 207.

And *Carolinus Smith*, againſt whom the ſaid *Richard Griggs* by his bill exhibited complaineth by the name of *Charles Smith*, by *J. A.* his attorney cometh and defendeth the force and injury, *&c.* and prayeth judgment of the ſaid bill, becauſe he ſaith that he was baptized by the name of *Carolinus*, and by the ſame name from the time of his baptiſm hitherto hath been always known and named by the name of *Carolinus* *; *without this*, that he the ſaid *Carolinus* now is or ever was known or named by the name of *Charles*, as by the ſaid bill is above ſuppoſed; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Traverſe.

Martha Hinton widow complaineth of *James Altham* and *Anne* his wife, otherwiſe called *Anne Jeſſon*, of the city of *Coventry* ſpinſter, in the cuſtody of the marſhal, of a plea that they render to her 400 *l.* (on a bond made by the feme *dum ſola.*)

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* The traverſe is material, for one may have a *Nomen* and *Cognomen* that never was baptized. *Salk.* 6. 6 *Mod.* 115. *Holt* 492, 563.

Plea in abatement by baron and feme, miſnomer in the wife. B. R.

And the ſaid *James* and one —— his wife come in their proper perſons and defend the force and injury, and ſay that ſhe the ſame ——— was baptized by the name of ——, and is, and from the time of her nativity hitherto was always known and named by the name of ———; *without this*, that ſhe the ſame ——— now is, or ever was known or named by the name of *Anne*, as by the ſaid bill is ſuppoſed; and this they are ready to verify: Wherefore they pray judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.* *T. L.*

Plea in abatement, miſnomer in the defendant's chriſtian name. B. R. M. 5 Ann. Ro. 439. Salk. 8, 712. Carth. 207. Lib. Placit. 1.

And lady *Honoria Gerard*, againſt whom the ſaid *Thomas* hath exhibited his bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, cometh in her proper perſon and defendeth the force and injury, *&c.* and prayeth judgment of the ſaid bill, becauſe ſhe ſaith that ſhe was baptized by the name of *Honoria*, to wit, at the pariſh of St. *Clement Danes* aforeſaid, and from her baptiſm to this time has always been known and named by that name; *without this*, that ſhe the ſaid *Honoria* now is or ever was known or named by the name of *Elizabeth*, as by the ſaid bill is above ſuppoſed; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Traverſe.

Imparlance to a plea.

And the ſaid *Thomas Stroud* prayeth day to imparl to the ſaid plea; and it is granted to him, *&c.* And, upon this, day is thereupon given to the parties aforeſaid, before our lady the queen, at *Weſtminſter*, until

Thurſday next after the octave of St. *Hilary*, to wit, to the ſaid *Thomas* to imparl to the ſaid plea, and then to reply, *&c.* At which day, before our lady the queen at *Weſtminſter*, cometh as well the ſaid *Thomas Stroud* by his attorney aforeſaid, as the ſaid defendant in her proper perſon. *And* the ſaid *Thomas* prayeth day to imparl further to the ſaid plea: And it is granted to him, *&c.* And, upon this, day is thereupon further given to the ſaid parties, before our lady the queen at *Weſtminſter*, until *Wedneſday* next after fifteen days from the day of *Eaſter*, to wit, to the ſaid *Thomas*, to [*Verbatim ut antea, uſque*] her proper perſon. *And* the ſaid *Thomas* ſaith, * that the ſaid lady *Gerard*, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* hath exhibited his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ought not to be admitted to her ſaid plea for quaſhing the ſaid bill of the ſaid *Thomas*, becauſe he ſaith that ſhe the ſaid lady *Gerard*, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* in the term of St. *Michael* laſt paſt exhibited

Further imparlance.

Replication, eſtoppel the defendant put in bail by the name of Elizabeth.

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* The putting in bail is the act of the court, and not of the party, and therefore cannot eſtop her; but the defendant appearing by that name, may eſtop himſelf, and bail is an appearance as well as bail: But then it ought to be pleaded as an appearance, if the plaintiff would make uſe of that as an eſtoppel. In debt on a bail-bond, if the defendant has put in common bail, he cannot plead he has put in common bail, but *Comperuit ad diem*, for he muſt plead according to the operation things have in law. *Salk.* 8.

his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, in that ſame term of St. *Michael* put in common bail in the court here, at the ſuit of the ſaid *Thomas*, in the plea aforeſaid, by the name of lady *Elizabeth Garret*, as by the record thereof remaining in the ſame court of our ſaid lady the queen, before the queen herſelf at *Weſtminſter*, more fully appeareth; and this he is ready to verify by that record: Wherefore he prayeth judgment if the ſaid lady *Gerard*, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* hath exhibited his ſaid bill, by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ought to be admitted to her ſaid plea for quaſhing his ſaid bill, contrary to the ſaid record, *&c.*

Demurrer to the replication.

And the ſaid *Honoria Gerard*, againſt whom the ſaid *Thomas* has exhibited his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ſaith, that the ſaid plea above in replying pleaded by the ſaid *Thomas* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to compel the ſaid *Honoria* to anſwer the ſaid bill of the ſaid *Thomas*; to which ſaid plea the ſaid *Honoria* hath no need, nor is ſhe obliged by the law of the land in any manner to anſwer; and this ſhe is ready to verify: Wherefore, for want of a ſufficient replication in this caſe, the ſaid *Honoria*, as before, prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Joinder.

And the ſaid *Thomas* ſaith, that the ſaid plea above in replying pleaded by the ſaid

Thomas

Thomas in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to compel the ſaid *Elizabeth* to anſwer to the ſaid bill of the ſaid *Thomas* thereupon againſt the ſaid *Elizabeth*; which ſaid plea, and the matter therein contained, the ſaid *Thomas* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *Elizabeth* hath not anſwered to the ſaid plea, nor hitherto in any manner denied the ſame, the ſaid *Thomas* as before prayeth judgment, and that the ſaid *Elizabeth* may be compelled to anſwer to the ſaid bill of the ſaid *Thomas*, &c. *But* becauſe the court of our ſaid lady the queen now here is not adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen at *Weſtminſter*, until —— next after ——, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not adviſed thereof. *Continuance.*

And the ſaid *Philip Beach* in his own perſon cometh and prayeth judgment of the original writ of the ſaid *Ambroſe*, becauſe he ſaith, that by the ſtatute of additions made and provided, every defendant in every writ in which proceſs of outlawry lieth, ought to be named and called in ſuch writ of a certain myſtery or degree, whereof ſuch defendant is, or at the time of obtaining ſuch writ was, or before had been; and this he is ready to verify: Wherefore, in as much as the ſaid *Philip* by the ſaid original writ is not called or named of any degree or myſtery *Plea in abatement, the want of addition.* C. B.

ſtery whatſoever, he the ſaid *Philip* prayeth judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.*

W. Wynne.

Oyer prayed of original in Homine replegiando. B. R. Salk. 5, 705.

And the ſaid *Thomas Woods* and *Mary* his wife, by *Richard Aſh* their attorney, come and pray Oyer of the ſaid original writ, and of the return of the ſaid writ; and they are read to them in theſe words, to wit, *Anne* by the grace of God [The writ and return *in hæc verba*] *Which* being read and heard, the ſaid *Thomas Woods* and *Mary* his wife pray judgment of the ſaid writ, becauſe they ſay that by form of the ſtatute the * addition of the town or hamlet, or place and county of the dwelling of the ſaid *Thomas*, ought to be contained in the ſaid original writ of the ſaid *Charles* earl of *Banbury*, and *Mary* counteſs of *Banbury* his wife; and this they are ready to verify: Wherefore, for that ſuch addition is not contained in the ſame writ, the ſaid *Thomas* and *Mary* pray judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.*

Plea in abatement, no addition of the place of defendants dwelling in the writ. 1 H. 5. c. 5.

Demurrer.

And the ſaid *Charles* earl of *Banbury*, and the ſaid *Mary* counteſs of *Banbury* his wife, ſay, that by any thing by the ſaid *Thomas*

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* The original replevin is *Vicountiel*, and the court proceeds upon the *Pluries*: Therefore the firſt replevin needs no addition within the ſtatute; and where the firſt writ is without addition, it cannot be neceſſary in the ſecond; nay, the inſerting ſuch an addition would vitiate the ſecond writ, for it cannot vary from the former. *Salk.* 5.

and

and *Mary* above pleaded for quaſhing the ſaid writ, the writ of the ſaid earl and counteſs ought not to be quaſhed, becauſe they ſay that the ſaid plea above pleaded by the ſaid *Thomas* and *Mary* his wife, in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to quaſh the ſaid writ of the ſaid earl and counteſs; to which ſaid plea the ſaid earl and counteſs have no need, nor are they obliged by the law of the land, in any manner to anſwer; and this they are ready to verify: Wherefore, for want of a ſufficient plea of the ſaid *Thomas* and *Mary* in this caſe, they the ſaid earl and counteſs pray judgment, and that the writ of the ſaid earl and counteſs may be adjudged good, and that the ſaid *Thomas* and *Mary* may anſwer further to the ſaid writ, *&c.*

Joinder.

AND the ſaid *Thomas* and *Mary* his wife ſay, that the ſaid plea above pleaded by the ſaid *Thomas* and *Mary*, in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to quaſh the ſaid writ of the ſaid earl and counteſs; which ſaid plea, and the matter therein contained, they the ſaid *Thomas* and *Mary* are ready to verify, as the court, *&c.* And becauſe the ſaid earl and counteſs have not anſwered to the ſaid plea, nor as yet any ways denied the ſame, the ſaid *Thomas* and *Mary*, as at firſt, pray judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.* *But* becauſe the court of our ſaid lady the queen now here is not yet adviſed about giving judgment

Continuance.

judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen until ——— whereſoever, *&c.* to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not yet adviſed thereof.

Plea in abatement in ejectment, that the lands are parcel of the manor of B. *which is antient demeſne.* B. R. Salk. 56,775.

And the ſaid *Simon Winch*, by *John Sandwell* his attorney, cometh and ſaith, that the tenements in the ſaid declaration above ſpecified are, and from the time to the contrary whereof the memory of man is not, have been parcel of the manor of *Bray* in the county aforeſaid, of which ſaid manor our lord the king and lady the queen are ſeiſed in right of their crown; and that the ſaid * manor is of the antient demeſne of the crown of our lord the king and lady the queen; and that the ſaid tenements are impleadable and have been impleaded, from the time to the contrary whereof the memory of man is not, in the court of the ſaid manor by the ſmall writ of our lord the king and lady the queen of right cloſe; and this he is ready to verify, as the court ſhall conſider, *&c.* Wherefore he prayeth judgment if the court

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* *Per Cur.* Suppoſing the manor to be antient demeſne, yet the manor and the demeſnes of the manor are impleadable at common law, and not in the lord's court, for then the lord would be judge in his own cauſe. But antient demeſne lands, held of the manors, are impleadable in the court of antient demeſne, and there only. *Salk.* 56. *Vide F. N. B.* 11. *m.* 1 *Roll.* 324.

of

of our lord the king and lady the queen here will take cognizance of the plea thereupon, *&c.*

And the ſaid *Thomas Barker* ſaith, that by any thing by the ſaid *Simon Winch* in pleading above alledged, the court of our lord the king and lady the queen here ought not to be barred from having cognizance of the ſaid plea, becauſe he ſaith that the ſaid plea above pleaded by the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid court of our lord the king and lady the queen now here from having cognizance of the ſaid plea; to which ſaid plea, and the matter therein contained, the ſaid *Thomas Barker* has no need, nor is he obliged by the law of the land, in any manner to anſwer; and this he is ready to verify: Wherefore, for want of a ſufficient anſwer in this caſe, the ſaid *Thomas* prayeth judgment, and his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances, together with his damages by occaſion of the treſpaſs and ejectment of farm aforeſaid, to be adjudged to him, *&c.* *And* for cauſes of demurrer in law upon the ſaid plea, the ſaid *Thomas*, according to the form of the ſtatute in ſuch caſes lately made and provided, ſheweth and demonſtrateth to the court here theſe cauſes following, to wit, for that the ſaid *Simon* hath not in his ſaid plea ſhewed to the court here, nor alledged that the ſaid tenements, with the appurtenances mentioned in the ſaid declaration, or any parcel

Demurrer.

Cauſes of demurrer do not ſay the lands are held of the manor of B.

parcel of them, are held of our ſaid lord and lady the preſent king and queen, of their manor of *Bray* aforeſaid, and becauſe the ſaid plea is incertain, inſenſible, and wants form.

Joinder. **And** the ſaid *Simon* ſaith, that the ſaid plea above pleaded by him the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to bar the ſaid court of our lord the king and lady the queen now here from having cognizance of the ſaid plea; which ſaid plea, and the matter therein contained, he the ſaid *Simon* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *Thomas* hath not anſwered to the ſaid plea, nor as yet any ways denied the ſame, he the ſaid *Simon* as at firſt prayeth judgment if the court of our ſaid lord the king and lady the queen now here, will or ought to take cognizance of the ſaid plea. *But* becauſe [Continuances to *in Craſt. Animar'*] *At which day* before our lord the king and lady the queen at *Weſtminſter* the ſaid parties come by their attornies aforeſaid. *Whereupon* the court of our ſaid lord the king and lady the queen now here having ſeen and fully underſtood all and ſingular the premiſſes, and having maturely deliberated thereupon, for that it appeareth to the court of our ſaid lord the king and lady the queen now here, that the ſaid plea above pleaded by the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid court of our ſaid lord the king and lady the queen now here from

Continuances.

Judgment, Reſpondeas Ouſter.

from having cognizance of the ſaid plea, the ſaid *Simon* is bid by the court to anſwer further to the declaration. *Whereupon* the ſaid *Simon*, being ſolemnly demanded, by the ſaid *John Sandwell* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he the ſaid *Simon* is in nothing guilty of the treſpaſs and ejectment aforeſaid as the ſaid *Thomas* above complaineth againſt him; And of this he putteth himſelf upon the country. *And* the ſaid *Thomas* doth ſo likewiſe, *&c.* *Therefore* it is commanded to the ſheriff that he cauſe to come before our lord the king and lady the queen, on the *Octave* of the purification of the bleſſed *Mary*, whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, at the ſame place, *&c.*

Plea, Not guilty.

Iſſue.

Venire facias *by original awarded.*

And the ſaid *Margaret* and *Mary* in their proper perſons come and defend the force and injury, *&c.* and pray judgment of the ſaid bill of the ſaid *Rebecca*, and that the ſaid bill may be quaſhed, becauſe they ſay that the cloſe and yard, and alſo the places in which the ſaid treſpaſs is ſuppoſed to be done, are, and at the ſaid time in which, *&c.* were one acre of land; and * that the

Plea in abatement to treſpaſs, that one of the defendants is tenant *in* common *with the plaintiff.* B. R. Salk. 4, 708.

* In treſpaſs, the defendant cannot plead in abatement, that he himſelf is tenant in common with the plaintiff, becauſe he may give it in evidence; but on the other ſide he may plead, that another is tenant in common with the plaintiff, for that will not prove him not guilty. *Salk.* 4.

ſaid

ſaid *Rebecca*, at the ſaid time in which, *&c.* had nothing in the ſame acre of land, unleſs together in common, and as undivided with the ſaid *Mary Bonner*, † who is alive at the pariſh of *Stepney* in the county of *Middleſex*; And this they are ready to verify: Wherefore they pray judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Replication, ſole ſeiſed. And the ſaid *Rebecca* ſaith, that the ſaid bill of her the ſaid *Rebecca* ought not to be quaſhed for the reaſon before alledged, becauſe ſhe ſaith, that at the ſeveral times the ſaid ſeveral treſpaſſes are ſuppoſed to be done, ſhe was ſole ſeiſed of the ſaid cloſe and yard in the ſaid declaration of the ſaid *Rebecca* firſt mentioned, and alſo of the ſaid cloſe and yard in the ſaid declaration of the ſaid *Rebecca* ſecondly mentioned, and of the ſaid well in the ſaid declaration alſo mentioned, and alſo of the third yard in the ſaid declaration of the ſaid *Rebecca* thirdly mentioned; and that the ſaid *Margaret* and *Mary* at the ſaid ſeveral times in which, *&c.* did the ſeveral treſpaſſes aforeſaid, as the ſaid *Rebecca* by her ſaid declaration above complaineth againſt them: ‖ *Without this*, that the ſaid

Traverſe.

M. B.

† Where-ever jointenancy is pleaded in abatement, the life of the other jointenant not named is averred in the plea, otherwiſe the plea is ill. *Salk.* 32. 1 *Saund.* 29.

‖ Whether the plaintiff ſhould not to have concluded his *abſque hoc* with an averment? And the court ſeemed to think, that where an *abſque hoc* comprizes the whole matter generally, as *abſque tali cauſa*, it may conclude,

&

M. B. at the reſpective times aforeſaid, or at any of them, had any thing in the ſaid premiſſes, or any of them: And ſhe prays that this may be inquired of by the country.

Demurrer. And the ſaid *M. D.* otherwiſe *D.* and *M. B.* ſay [*prout morat'* Stroud *v.* Gerard, *uſque*] may be quaſhed. *And* for cauſes of demurrer in this caſe, according to the form of the ſtatute in ſuch caſe lately made and provided, the ſaid *M.* and *M.* ſhew to the court here theſe cauſes following, for that the ſaid plea of the ſaid *R.* is double, incertain, and wanteth form, and concludeth to the country. *Cauſes of demurrer.*

Joinder. **And** the ſaid *Rebecca* ſaith [*prout antea uſque*] prayeth judgment, and that the ſaid *M.* and *M.* may anſwer further to the ſaid bill of the ſaid *R.* &c. *But* becauſe [*ut antea.*] *Continuance.*

Reſpondeas Ouſter awarded.

Plea in abatement, that defendant is a prothonotary's clerk, and ſuable by bill only, and not by writ. **And** the ſaid *T.* in his proper perſon cometh and ſaith that he is, and long before the day of ſuing out the original writ of the ſaid *W.* and at the ſame time was, and ever ſince hath been one of the clerks of *G. C.* eſq; one of the prothonotaries of the court of our lord the king of the bench at *Weſtminſter* in the county of *Middleſex*, daily attending

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& de hoc ponit ſe ſuper patriam; but where it only traverſes a particular matter, as *abſque tali warranto, &c.* it ought to be averred. But the chief juſtice thought not this ſuch a particular matter as need be averred, for 'tis to maintain his writ. *Salk.* 4. Vide *Dyer* 333, 353. 1 *Brownl.* 1 *Lev.* 26. 2 *Keb.* 380.

in his office in the ſame court; and that he hath tranſacted, and doth tranſact in his ſaid office, divers affairs of the ſaid prothonotary, and of ſeveral ſubjects of our ſaid lord the king, and hath drawn and written, and doth draw and write divers pleas in the ſame office, and carries on other affairs of the ſaid prothonotary. And the ſaid *T.* further ſaith, that by laudable and ancient cuſtom, and according to the cuſtom and law of the land, and the liberties and privileges of the ſame court, for time paſt uſed and approved hitherto, it has obtained, that all clerks of the prothonotaries of the court of our lord the king of the bench, exerciſing any affairs in any office of the ſame prothonotaries in the ſame court, ought not, and have not for the whole time aforeſaid been uſed according to the liberties and privileges of the ſame court of the bench aforeſaid, for the whole time aforeſaid uſed and approved, to be drawn or compelled other than in the ſame court of the bench, to anſwer before any ſecular judges, except before the juſtices of our lord the king of the ſame bench, by bill to be filed againſt ſuch clerk in the office of ſuch prothonotary, in which ſuch clerk is, upon any pleas or plaints (pleas of freehold, felonies and appeals only excepted); And this the ſaid *T.* is ready to verify: Wherefore he prays judgment, if he the ſaid *T.* ought to be compelled to anſwer to the ſaid declaration, not being a bill filed againſt him the ſaid *T.* in the office of the ſaid prothonotary, *&c.*

Account.

Account.

Hil. 18 *Geo.* 2.

London, *to wit.* *J. E.* complaineth of *W. W.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea that he render to the ſaid *J.* a reaſonable account of the time in which he was the bailiff of the ſaid *J.* at *London* aforeſaid, for that whereas he the ſaid *W.* on the 14th day of *Auguſt* in the year of our Lord 1734. and from thence until the 1ſt day of *June* in the year of our Lord 1740. at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was the bailiff of the ſaid *J.* and for and during that time had the care and management of divers goods and chattels, to wit, of three gold watches and two ſilver watches of the ſaid *J.* there to merchandize and make profit thereof for the ſaid *J.* and to render to the ſaid *J.* a reaſonable account thereof, when he ſhould be afterwards thereto requeſted; *Yet* the ſaid *W.* altho' often requeſted, hath not yet rendered the aforeſaid reaſonable account of the ſaid goods and chattels to the ſaid *J.* but to render the ſame to him hath hitherto wholly refuſed, and ſtill refuſeth, to the ſaid *J.* his damage of 100 *l.* And therefore he bringeth his Suit, *&c.* Pledges, *&c.*

Declaration in account, as bailiff of goods and chattels. B. R.

Plea Ne unques ballivus.

And the ſaid *W.* by *R. R.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith, that he never was bailiff of the ſaid *J.* nor had the care and management of the ſaid goods and chattels, nor of any parcel of them, to render account thereof to the ſaid *J.* when he ſhould be thereto requeſted in manner and form as the ſaid *J.* above complaineth againſt him: And of this he putteth himſelf upon the country.

Declaration in account by the preſent church-wardens againſt the late church-wardens. B. R. Caſes L. E. 22. Rep. Q. A. 186, 263.

London, to wit, *J. B.* and *J. A.* now wardens of the parochial church of the pariſh of *St. Bartholomew the leſs* near the *Royal Exchange*, *London*, complain of *J. E.* and *S. F.* late wardens of the ſame parochial church, being in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lady the queen, before the queen herſelf, of a plea, that they render to the ſaid *J.* and *J. A.* now wardens of the ſaid parochial church, a reaſonable account for the time in which they the ſaid *J. E.* and *S. F.* were wardens of the parochial church of the ſaid pariſh, and receivers of the monies, goods and chattels of the pariſhioners of the ſaid parochial church of the pariſh of *St. Bartholomew the leſs* near the *Royal Exchange*, *For that*, to wit, that the ſaid *J. E.* and *S. F.* being wardens of the ſaid church at *London* aforeſaid, in the pariſh aforeſaid, in the ward of *Broadſtreet*, from the feaſt of *Eaſter* in the year of our Lord 1706. until at and upon the feaſt of *Eaſter* in the year of our Lord 1708. within that time, by virtue of their ſaid office, had the care and adminiſtration of the goods and chattels of the

pariſhioners

pariſhioners of the ſaid parochial church, and received divers ſums of money hereafter mentioned, to the uſe of the pariſhioners of the ſaid church, paid to the ſaid *J. E.* and *S. F.* by divers perſons hereafter mentioned, to render account thereof; to wit, by the hands of *W. W.* 21*l.* 6*s.* 6*d.* by the hands of *J. T.* 68*s.* 6*d.* by the hands of *M. E.* 6*l.* 10*s.* by the hands of *J. A.* 7*l.* 16*s.* 8*d.* * by the hands of the pariſhioners of the ſaid pariſh 1000*l.* by the hands of Mr. *G.* 30*l.* by the hands of Mr. *P.* 14*s.* 2*d.* [and ſo of many others, and then the declaration proceeds as follows] to render a reaſonable account thereof to the ſaid pariſhioners of the ſaid parochial church, when they ſhould be thereunto required; *And* afterwards, to wit, on the 5th day of *April* in the year of our Lord 1708. the ſaid *J. E.* and *S. F.* from the office of wardens aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, were removed, and the ſaid *J. B.* and *J. A.* the preſent plaintiffs, afterwards, to wit, on the ſaid 5th day of *April* in the year of our Lord laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, were in due manner elected and conſtituted into the office of

* The defendants pleaded, that the plaintiffs were never elected church-wardens: Iſſue, and verdict for the plaintiffs. Judgment, that as to 1000*l.* ſaid to be received by the hands of the pariſhioners, the count ſhould abate, and that the defendants *eant ſine inde die*; and that as to the reſt, the defendants ſhould account. *Q. quid inde ulterius?*

wardens aforeſaid by the pariſhioners of the ſaid church, and now are wardens of the ſaid church: *Neverthelefs* the ſaid *J. E.* and *S. F.* although often requeſted, have not yet rendered their account of the money and goods aforeſaid to the ſaid *J.* and *J. A.* now wardens of the ſaid church, but have altogether refuſed, and ſtill do refuſe to render the ſame to them, to the damage of the pariſhioners of the ſaid parochial church 2000 *l.* And thereupon they bring Suit, *&c.*

Pledges, *&c.*

Bar.

Hill. 17 *Geo.* 2.

Plea by an executrix. C. B.

AND the ſaid *E.* by *W. D.* her Attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith, that the ſaid *J. P.* ought not to have or maintain his action aforeſaid againſt her, *becauſe* ſhe ſaith that ſhe hath fully adminiſtred all the goods and chattels which were the ſaid *S. W.*'s at the time of his death in her hands to be adminiſtred, and that ſhe hath not any goods or chattels which were the ſaid *S. W.*'s at the time of his death in her hands to be adminiſtred, nor had ſhe any at the time of iſſuing the original writ of the ſaid *T.* nor at any time ſince; And this the ſaid *E.* is ready to verify: Wherefore ſhe prayeth judgment, if the ſaid *J. P.* ought to have or maintain his ſaid action againſt her. *And* the ſaid *E.* for a further plea in this behalf, by leave of the

Plene adminiſtravit *generally.*

And a judgment recover'd againſt her in an action of covenant.

court

court here for this purpoſe firſt had and obtained by force of the ſtatute in ſuch caſes made and provided, further ſaith, that the ſaid *J. P.* ought not to have or maintain his ſaid action againſt her, becauſe ſhe ſaith, that by a certain Indenture made at *B.* aforeſaid, in the life-time of the ſaid *S.* to wit, upon the 19th day of *November* in the year of our Lord 1718. between the ſaid *S.* by the Name of *S. W.* of *W.* in the county of *N.* gent. of the firſt part, the ſaid *E.* by the name of *E. O.* of *Meers Aſhby* in the ſaid county of *N.* widow, of the ſecond part, and *R. H.* (who is ſince dead) and *T. G.* of the third part, reciting, that whereas a marriage was then ſhortly to be had and ſolemnized between the ſaid *S.* and the ſaid *E.* and that the ſaid *E.* being then poſſeſſed of ſeveral goods, chattels and monies of a conſiderable value, and being deſirous of ſecuring the ſum of 300 *l.* of good and lawful money of *Great Britain*, to be diſpoſed of according to her laſt will and teſtament, writing or otherwiſe, it was by the ſaid indenture declared and agreed by and between all the ſaid parties to the ſaid indenture, that the ſaid ſum of 300 *l.* ſhould, after the ſaid intended marriage ſhould take effect, be raiſed in a convenient time out of the goods and chattels of the ſaid *S.* or the ſaid *E.* and ſhould be ordered and diſpoſed of, and be employed to ſuch perſon or perſons, and to and for ſuch uſe and uſes, intents and purpoſes, as was thereafter mentioned and declared; (that is to ſay) that the ſaid ſum of 300 *l.* as ſoon as

The indenture.

raiſed, ſhould be put out at intereſt, by the approbation of the ſaid *S.* and the ſaid *E.* during the joint lives of the ſaid *S.* and *E.* and that whenſoever the ſaid monies or any part thereof ſhould be paid in, the ſaid monies ſo paid ſhould be put out again at intereſt upon ſuch ſecurities as the ſaid *S.* and the ſaid *E.* ſhould approve of, and that the ſecurities to be taken for the ſame ſhould be made and taken in the names of the ſaid *R.* and *T. G.* in truſt for the ſaid *E.* And it was thereby further declared and agreed by and between the ſaid parties to the ſaid indenture, and the ſaid *E.* did thereby declare and agree, that it ſhould and might be lawful to and for the ſaid *S.* to have and receive the intereſt of the ſaid ſum of 300*l.* for the better livelihood and maintenance of the ſaid *S.* and *E.* and their family; And the ſaid *S.* did by the ſaid indenture for himſelf, his heirs, executors and adminiſtrators, covenant, grant and agree to and with the ſaid *R.* and *T. G.* their executors and adminiſtrators, and to and with every of them, that the ſaid ſum of 300*l.* and every part thereof, ſhould and might from time to time, and at all times after the death of the ſaid *E.* be paid unto, had, taken and received by ſuch perſon or perſons to whom the ſaid *E.* ſhould at any time or times during her life-time limit, give, deviſe, order, appoint or diſpoſe of the ſame, or any part or parts thereof, either by her laſt will and teſtament in writing, or by any other writing purporting to be her laſt will and teſtament, or otherwiſe;

otherwiſe; And it was by the ſaid indenture further agreed and declared, that if it ſhould happen that the ſaid *E.* ſhould ſurvive the ſaid *S.* her intended husband, that then and in ſuch caſe, from and immediately after the death of the ſaid *S.* the ſaid ſum of 300*l.* and every part thereof, ſhould be accounted the proper monies and eſtate of the ſaid *E.* and ſhould and might be received and taken by her the ſaid *E.* her executors and adminiſtrators, and ſhould and might be employed and diſpoſed of to ſuch perſon and perſons, and to and for ſuch uſe and uſes, intents and purpoſes, and in ſuch manner and form as ſhe the ſaid *E.* ſhould at any time or times then following during her life think good to limit, appoint, order, give, deviſe or diſpoſe of the ſame, or any part or parts thereof, as by the ſaid indenture more fully appeareth. *And* the ſaid *E.* further ſaith, that af- *Breach.* terwards, to wit, on the 1ſt day of *December* in the year laſt above mentioned, at *B.* aforeſaid, the ſaid marriage was had and ſolemnized between the ſaid *S.* and the ſaid *E.* and altho' the ſaid *S.* afterwards, to wit, on the ſame day and year, at *B.* aforeſaid, poſſeſſed himſelf of divers goods, chattels and monies, of a conſiderable value, to wit, of the value of 300*l.* which ſaid goods, chattels and monies, at the time of his ſaid intermarriage with the ſaid *E.* were the proper goods, chattels and monies of the ſaid *E.* yet the ſaid *E.* ſaith, that notwithſtanding the ſaid marriage took effect as aforeſaid, and the ſaid *S.* had poſſeſſed himſelf of the ſaid ſeveral

veral goods, chattels and monies as aforeſaid, yet the ſaid ſum of 300 *l.* or any part thereof, hath not hitherto been raiſed out of the goods and chattels of the ſaid *S.* nor of the ſaid *E.* nor otherwiſe raiſed and put out according to the form and effect of the ſaid agreement above mentioned and contained in the ſaid indenture in that reſpect. *And* thereupon, the ſame indenture remaining in full force and virtue not releaſed, and the ſaid 300 *l.* or any part thereof, not paid, ſatisfied or diſcharged, and the ſaid *T. G.* having ſurvived the ſaid *R.* he the ſaid *T.* in *Hil.* term in the 16th year of the reign of his preſent majeſty, in the court of our ſaid lord the king of the bench here, to wit, at *W.* in the county of *M.* impleaded the ſaid *E.* by the name of *E. W.* late of *W.* in the ſaid county of *N.* widow and executrix of the laſt will and teſtament of *S. W.* gent. her late huſband, deceaſed, otherwiſe lately called *S. W.* of *W.* in the county of *N.* gent. in a plea, that ſhe keep with the ſaid *T.* the covenant made between the ſaid *S.* and the ſaid *R. H.* deceaſed, and the ſaid *T.* according to the force, form and effect of the indenture aforeſaid made between them and the ſaid *E.* *And* thereupon ſuch proceedings were had in the ſame court, that the ſaid *T.* in the ſaid *Hil.* term in the 16th year aforeſaid, before Sir *J. W.* knt. and his companions juſtices of our ſaid lord the king, of the bench aforeſaid, at *W.* aforeſaid, by judgment of the ſaid court recovered againſt the ſaid *E.* as executrix as aforeſaid, 300 *l.* which were adjudged

Action brought thereupon againſt defendant,

And judgment recovered.

judged to the ſaid *T.* by the ſaid court here for his damages which he had ſuſtained by occaſion of the ſaid breach of covenant in that behalf to be levied of the goods and chattels which were the goods and chattels of the ſaid *S.* at the time of his death, in the hands of the ſaid *E.* unadminiſtred, whereof ſhe is convicted, as by the record and proceedings thereof now remaining in the ſaid court of our ſaid lord the king of the bench here, to wit, at *W.* aforeſaid, more fully appeareth; which ſaid judgment ſtill remaineth in its full force, ſtrength and virtue, not reverſed nor vacated, nor any wiſe ſatisfied. *And* the ſaid *E.* further ſaith, that ſhe hath fully adminiſtred all the goods and chattels which were the ſaid *S.*'s at the time of his death in her hands to be adminiſtred, except goods and chattels to the value of 5*l.* and that ſhe hath not, nor had at the time of ſuing out of the original writ of the ſaid *J.* nor hath ever ſince had any goods and chattels which were the ſaid *S.*'s at the time of his death in her hands to be adminiſtred, except the ſaid goods and chattels to the value of the ſaid 5*l.* which are not ſufficient to ſatisfy the ſaid debt due on the ſaid judgment as aforeſaid, and which are ſubject and liable towards ſatisfaction thereof; And this the ſaid *E.* is ready to verify; Wherefore ſhe prayeth judgment, if the ſaid *J.* ought to have or maintain his ſaid action againſt her, *&c.* *R. Draper.*

Plene adminiſtravit præter.

And the ſaid *S.* by *G. B.* his attorney cometh and defendeth the force and injury when

Plea, Non aſſumpſit infra ſex annos.

when, *&c.* and ſaith, that the ſaid *C.* ought not to have or maintain his aforeſaid action againſt him, becauſe he ſaith that the ſaid bill of the ſaid *C.* was exhibited on the 23d of *April* in the 8th year of the reign, *&c.* and not before; and that he the ſaid *S.* at any time within ſix years next before the day of exhibiting the ſaid bill, did not undertake in manner and form as the ſaid *C.* above hath declared againſt him; And this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *C.* ought to have or maintain his aforeſaid action thereupon againſt him, *&c.*

Plea, Non aſſumpſit, Non aſſumpſit infra ſex annos, *that defendant was a bankrupt, and plaintiff's cauſe of action accrued before defendant became a bankrupt.* C. B.

And the ſaid *D.* by *T. B.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he did not aſſume upon himſelf in manner and form as the ſaid *G.* above complaineth againſt him; And of this he putteth himſelf on the country. *And* the ſaid *G.* likewiſe, *&c.* *And* the ſaid *D.* by leave of this court, according to the form of the ſtatute in that caſe lately made and provided, further ſaith, that the ſaid *G.* ought not to have his ſaid action againſt him the ſaid *D.* becauſe he ſaith that he the ſaid *D.* did not aſſume upon himſelf in manner and form as the ſaid *G.* above complaineth againſt him, at any time within ſix years next before the day of obtaining the ſaid original writ of the ſaid *G.* And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *G.* ought to have his ſaid action againſt him the ſaid *D.* *And* the ſaid *D.* by leave of this court, according to the form of the ſaid ſtatute in that caſe lately made

made and provided, further ſaith, that the ſaid *G.* ought not to have his ſaid action againſt the ſaid *D.* becauſe he ſaith, that he the ſaid *D.* ſince the 26th day of *May* in the year of our lord 1716. mentioned in a certain act made in the parliament of his late majeſty king *George* I. held by prorogation on the 11th day of *November* in the year of our lord 1718. intitled, *An act for the better preventing frauds committed by bankrupts*, and during the continuance of the ſaid act, to wit, on the —— day of —— in the year of our lord —— at *W.* aforeſaid, became a bankrupt, within the intention and meaning of the ſeveral ſtatutes made and in force againſt bankrupts: And the ſaid *D.* further ſaith, that the cauſe of the aforeſaid action in the declaration aforeſaid above ſpecified, did accrue to the ſaid *G.* before the time in which he the ſaid *D.* did as aforeſaid become kankrupt: And of this doth put himſelf upon the country: And the ſaid *G.* likewiſe, *&c.* *J. Baynes.*

Plea, Non aſſumpſit *by two defendants.* C. B.

And the ſaid *N.* and *J.* by *J. H.* their attorney come and defend the force and injury when, *&c.* and ſay, that they did not undertake in manner and form as the ſaid *J.* above complaineth againſt them: And of this they put themſelves upon the country: *And* the ſaid *J.* likewiſe, *&c.* *And* the ſaid *M.* by *H. H.* his attorney cometh and defendeth the force and injury when, *&c.* and ſayeth nothing in bar or preclusion of the aforeſaid action of the aforeſaid *J.* whereby the ſaid *J.* remaineth undefended by the ſaid *M.*

Iſſue.

Judgment by Nil dicit *againſt a third defendant.*

M. by reaſon whereof the ſaid *J.* ought to recover againſt the ſaid *M.* his damages occaſioned by the non-performance of his ſaid promiſes and undertakings. *But* becauſe it is not known whether or no the ſaid *N.* and *I.* will be convicted of the premiſſes, and if they ſhall be convicted, it is convenient and neceſſary that there ſhould be only one taxation of damages for the whole premiſſes in one writ ſpecified, and thoſe damages ought to be ſettled by the jury of the country in that behalf, let the writ of inquiry of damages aforeſaid againſt the ſaid *M.* be ſtayed until the ſaid iſſue between the ſaid *J.* and the ſaid *N.* and *J.* ſhall be determined; *Therefore*, as well to try the iſſue between the ſaid *J.* and the ſaid *N.* and *J.* above joined, as alſo to inquire what damages the ſaid *J.* hath ſuſtained by occaſion of the premiſſes aforeſaid, the ſheriff is commanded that he cauſe to come here twelve free and lawful men of the body of his county, *&c.* by whom, *&c.* and who are not related to the ſaid *N. I.* or *M.* or to the ſaid *J.* to recognize, *&c.* becauſe as well, *&c.*

Unica taxatio.

Venire tam ad triand' quam ad inquir'.

Plea in caſe Sur aſſump. *recovery in a former action.*

And the aforeſaid *J.* by *J. D.* his Attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after the making the ſaid ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, and before the day of obtaining the original writ of the ſaid *T.* to wit, in the term of St. *Michael*

chael in the preſent year of the reign of the now king, before Sir *R. E.* knt. and his companions juſtices of our ſaid lord the king of the bench at *W.* by bill and without writ of the ſame king, and by the conſideration of the ſaid court, the ſaid *T.* recovered againſt the ſaid *J.* 60 *l.* for his damages which he had ſuſtained, as well by reaſon of the not performing the ſeveral promiſes and aſſumptions in the ſaid declaration above mentioned, as for his coſts and charges by him in his ſaid ſuit in that behalf laid out and expended, as by the record and proceſs thereof in the ſaid court of our ſaid lord the king of the bench at *W.* being and remaining fully appeareth; *And* the ſaid *J.* averreth, that the promiſes and aſſumptions in the ſaid record mentioned, and the promiſes and aſſumptions in the ſaid declaration above-mentioned, are the ſame promiſes and aſſumptions, and not other or different, and made for the ſame conſiderations, and not for other or different; And this the ſaid *J.* is ready to juſtify: Whereupon he prayeth judgment, if the ſaid *T.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

And the aforeſaid *T.* ſaith, that by any thing alledged by the ſaid *J.* in the above pleading, he ought not to be precluded from having his action aforeſaid againſt the ſaid *J.* becauſe he ſaith that there is not any ſuch record of the ſaid recovery againſt the ſaid *J.* at the ſuit of the ſaid *T.* as he the ſaid *J.* above in pleading hath alledged; And this he *Replication*, Nul tiel rec'.

he is ready to verify: Whereupon he prayeth judgment, and that his ſaid damages may be adjudged to him, *&c.*

Rejoinder, Quod habetur tale recordum.

And the aforeſaid *J.* ſaith, that there is ſuch record of the ſaid judgment, as the ſaid *J.* above in pleading hath alledged: And this he is ready to verify by the ſaid record, and prayeth that the ſaid record may be ſeen and inſpected by the juſtices here. *And* becauſe the ſaid record is not now to be had here in court, *It is commanded* the ſaid *J.* that he have here the ſaid record on —— at his own peril, *&c.* The ſame day is given as well to the ſaid *T.* as to the ſaid *J.* here, *&c. At which day* come here as well the ſaid *T.* as the ſaid *J.* by their ſaid attornies; and the ſaid *J.* hath not here the ſaid record, but maketh default; whereby it ſufficiently appeareth to the juſtices here, that there is not any ſuch record of the ſaid recovery as the ſaid *J.* hath alledged: *Wherefore, &c.*

Day to bring in the record.

Defendant defecit de recordo.

Plea in caſe Sur aſſump. *recovery in another action.*

And the ſaid *M.* by *J. B.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *R. C.* his action thereof againſt the ſaid *M.* ought not to have, becauſe he ſaith, that he the ſaid *R.* heretofore, that is to ſay, in *Mich.* term in the 8th year of the reign of our now lord the king impleaded the ſaid *M.* in his ſaid majeſty's court of Exchequer before the barons of the ſaid Exchequer (the ſaid court of Exchequer being at that time, and ſtill is, at *W.* in the county of *M.*) in a certain plea of treſpaſs upon the caſe upon promiſe, for not performing theſe ſame promiſes

miſes and undertakings mentioned in the ſaid declaration, and ſuch proceedings were had thereupon in the ſaid court of Exchequer, that the ſaid *R. C.* afterwards, to wit, in the ſame *Mich.* term in the year aforeſaid, by the conſideration of the ſaid court of Exchequer, recovered againſt the ſaid *M.* 93 *l.* which to the ſaid *R. C.* in the ſaid court of Exchequer were adjudged for his damages which he ſuſtained, as well on occaſion of not performing the ſame promiſes and undertakings as are mentioned in the above declaration, as for his coſts and charges by him about his ſuit in that behalf laid out, whereof the ſaid *M.* is convicted, as by the record and proceedings thereof (which our now lord the king, by virtue of his majeſty's writ of error by the ſaid *M.* proſecuted of and upon the premiſſes, hath lately cauſed to be brought in his ſaid majeſty's court of Exchequer chamber at *W.* there to be determined, and which ſtill in the ſaid court of Exchequer remains undetermined) more at large appeareth, which ſaid judgment ſtill remaineth in its full ſtrength and effect, not in the leaſt reverſed, ſatisfied or annihilated; And this he is ready to verify by that record: Whereof he prayeth judgment, if the ſaid *R. C.* his ſaid action therefore againſt him ought to have, *&c.*

In ejectment, upon the demiſe of *J. B.* the defendants pleaded Not guilty; and this plea was prepared at the aſſizes, but the plaintiff did not proceed, and the plea was not offered.

Plea, Puis darrein cont. *in ejectment a releaſe from the leſſor of the plaintiff.*

And the ſaid *T. B.* and *J. H.* in their proper perſons come and ſay, that the juſtices of our ſovereign lady the queen here ought not to proceed to take the jury aforeſaid between the ſaid defendants and the ſaid plaintiff, becauſe they ſay, after the laſt continuance of the ſaid plea, to wit, after

from which the ſaid plaint was laſt continued here, until this day, to wit, on the 18th day of *July* laſt paſt, and before the ſame 18th day of *July*, to wit, on the 17th day of *July* laſt paſt, the ſaid *J. B.* by the name of *J. B.* of *E. W.* in the pariſh of *E.* in the county of *York*, by his writing ſealed with the ſeal of the ſaid *J.* bearing date the ſame 17th day of *July* at —— aforeſaid, remiſed and releaſed to the ſaid *T.* and *J.* and their heirs, all his eſtate, right and title of and in the ſaid meſſuages, lands and tenements in the ſaid declaration mentioned, and alſo all and all manner of actions and cauſes of action whatſoever of and concerning the ſaid premiſſes, or any part thereof; And this they are ready to verify, *&c.* Wherefore they pray that the ſaid juſtices will not proceed further to take the ſaid jury, with this, that the ſaid *T.* and *J.* will verify that the ſaid *J. J.* is made and named plaintiff in the ſame action only to try the title of the ſaid *J. B.* to the ſaid tenements.

Plea, outlawry in the plaintiff.

And the ſaid *T.* by *F. K.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *J.* ought not to have his aforeſaid action againſt him

the

the ſaid *T.* thereon, becauſe he ſaith that one *C. T.* heretofore (that is to ſay) in *Eaſter* term in the 5th year of the reign of his preſent majeſty, by an original writ impleaded the ſaid *J.* by the name of *J. H.* late of *London*, gent. in the court of the ſaid now king, before the king himſelf (the ſaid court then and ſtill being at *W.* in the county of *M.*) in a plea of treſpaſs; and the ſaid *T.* becauſe he did not appear in his ſaid majeſty's court before the king himſelf, to anſwer unto the ſaid *C.* in the aforeſaid plea, according to the law and cuſtoms of this realm, was put in exigent to be outlawed in *London*, and for that reaſon afterwards, to wit, on *Monday* next before the feaſt of the purification of the bleſſed virgin *Mary*, in the 6th year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king, before the king himſelf, was outlawed in due form of law at the ſuit of the ſaid *C.* in the aforeſaid plea, and ſtill remaineth outlawed, as by the record and proceedings thereof in his ſaid majeſty's court, before the king himſelf at *W.* aforeſaid, returned and now there remaining, may more fully appear; And this he is ready to verify by the ſaid record: Wherefore he prayeth judgment, whether the ſaid *J.* ought to have his ſaid action therefore againſt him, *&c.*

And the ſaid *J.* ſaith, that he by any thing by the ſaid *T.* in his plea above alledged, ought not to be barred from his ſaid action againſt him, becauſe he ſaith that there is not any ſuch record of outlawry

Replication, Nul tiel rec'.

in his ſaid majeſty's court, before the king himſelf, as the ſaid *T.* by his ſaid plea hath alledged; And this he is ready to verify in ſuch manner as the court ſhall award. *And* the ſaid *T.* is commanded that he have the record here on the morrow of the aſcenſion of our Lord at his peril; And the ſame day is given to the ſaid *J.* here, *&c. At which day* here come as well the ſaid *J.* as the ſaid *T.* by their attornies aforeſaid; and the ſaid *T.* hath not here the ſaid record, but maketh default thereof: *Wherefore* the ſaid *J.* ought to recover, *&c.*

Day to bring in the record.

Defendant defecit de recordo.

Plea, the ſtatute of frauds; no memorandum in writing.

And the ſaid *G.* by *R. B.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *J.* ought not to have his ſaid action againſt him, becauſe he ſaith that there is not, nor ever was any memorandum or note in writing of the ſaid promiſe and undertaking above ſuppoſed to be made and ſigned by the ſaid *G.* or any other perſon thereunto by him lawfully authorized, according to the form of the ſtatute for preventing frauds and perjuries in ſuch caſe lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J.* ought to have his ſaid action againſt him, *&c.*

Plea ſetting off a debt.

And the ſaid *W. T.* by *W. S.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *J.* and *S.* ought not to have their ſaid action againſt him, becauſe he ſaith that the ſaid *J.* and *S.* at the time of ſuing out the original of the ſaid *J.* and *S.* were and now are indebted to the

the ſaid *W. T.* in the ſum of 50 *l.* for meat, drink, waſhing, lodging, apparel, and other neceſſaries found and provided by the ſaid *W. T.* for the ſaid *S.* while ſhe was ſole, at her ſpecial inſtance and requeſt; and alſo in the further ſum of 50 *l.* for divers goods, wares and merchandizes ſold and delivered by the ſaid *W. T.* to the ſaid *S.* while ſhe was ſole, at her like inſtance and requeſt; and alſo in the further ſum of 50 *l.* as well for money by the ſaid *W. T.* to the ſaid *S.* while ſhe was ſole, at her requeſt lent and advanced, as for money to the uſe of the ſaid *S.* while ſhe was ſole, at her like requeſt expended, paid and laid out, and for money by the ſaid *S.* while ſhe was ſole, of the ſaid *W. T.* had and received; and alſo in the further ſum of 50 *l.* as well for divers work, labour, care and diligence of the ſaid *W. T.* by himſelf, his ſervants and horſes, for and at the like requeſt of the ſaid *S.* while ſhe was ſole, in and about her lawful buſineſs done and performed, as for depaſturing, feeding and grazing certain cattle of the ſaid *S.* while ſhe was ſole, at her like requeſt, depaſtured, fed and grazed by the ſaid *W. T.* which ſaid ſeveral ſums of 50, 50, 50 and 50 *l.* amount in the whole to the ſum of 200 *l.* and are ſtill due and unpaid to the ſaid *W. T.* And the ſaid *W. T.* further ſaith, that he has been, and ſtill is ready, and doth now offer (according to the form of the ſtatute in this behalf made and provided) to ſet off againſt the money which in and by this ſuit ſhall appear to be due to the ſaid

J. and *S.* ſo much of the ſaid 200 *l.* ſo as aforeſaid due to him the ſaid *W. T.* as ſhall ſatisfy ſuch money as appeareth to be due to the ſaid *J.* and *S.* as aforeſaid; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J.* and *S.* ought to have their ſaid action againſt him.

W. Hawkins.

Plea, ſetting ſeveral ſums againſt plaintiff's demands.

And the ſaid *J.* in his proper perſon cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *J.* ought not to have or maintain his ſaid action againſt him, *becauſe* he ſaith that the ſaid *J.* on the day of exhibiting his ſaid bill againſt the ſaid *J.* to wit, the 30th day of *May* in the year aforeſaid, at *W.* aforeſaid in the county aforeſaid, was and yet is indebted unto the ſaid *J.* in the ſum of 105 *l.* of lawful money of *G. B.* in the manner hereinafter mentioned; that is to ſay, the ſaid *J.* on the 29th day of *May* in the year of our Lord 1734. at *W.* in the county aforeſaid, made a certain promiſſory note in writing, and ſubſcribed his name thereto, which ſaid note beareth date the ſame day and year, whereby the ſaid *J.* promiſed to pay to the ſaid *J.* or order 144 *l.* ten days after date thereof, for value received by the ſaid *J.* of the ſaid *J.* And the ſaid *J.* averreth that he made no order for the payment of the ſaid note on the ſaid *J.* but acknowledgeth that the ſaid *J.* hath paid him the ſum of 110 *l.* part of the ſaid note, and the remaining 34 *l.* other part, ſo due and payable from the ſaid *J.* by the ſaid note to the ſaid *J.*

ſtill

ſtill remaineth juſtly due and payable to him; *And alſo* the ſaid *J.* afterwards, to wit, the 24th day of *July* in the year laſt mentioned, at *W.* aforeſaid in the county aforeſaid, made another promiſſory note in writing, and ſubſcribed his name thereto, which ſaid laſt mentioned note beareth date the ſame day, by which ſaid laſt mentioned note the ſaid *J.* ſix weeks after date thereof promiſed to pay to the ſaid *J.* or order 40*l.* for value received by the ſaid *J.* of the ſaid *J.* and the ſaid *J.* averreth that the ſaid ſum of money mentioned in the ſaid laſt mentioned note, or any part thereof, hath not been paid to him, and that he the ſaid *J.* hath not made any order for the payment thereof to any other perſon or perſons whatſoever, but the ſame note ſtill remaineth in his hands unpaid and unſatisfied; *And alſo* the ſaid *J.* on the ſaid 30th day of *May* in the year of our Lord 1735. at *W.* aforeſaid, in the county aforeſaid, was and yet is indebted to the ſaid *J.* in the ſum of 31*l.* of lawful money of *G. B.* as well for money before that time expended, laid out and paid, in the ſoliciting, proſecuting, carrying on and defending of ſeveral ſuits at law and in equity in his preſent majeſty's courts of Exchequer chamber, King's bench and Common bench at *W.* as for the ſaid *J.*'s fees, care and diligence, in ſoliciting, proſecuting, carrying on and defending the ſame for the ſaid *J.* by the ſaid *J.* and at the ſpecial inſtance and requeſt of the ſaid *J.* as alſo for money lent and paid to the ſaid *J.* by the

ſaid *J.* at the like ſpecial inſtance and requeſt of the ſaid *J.* *Which* ſaid ſeveral ſums of 34 *l.* 40 *l.* and 31 *l.* ſo due and owing to the ſaid *J.* from the ſaid *J.* as aforeſaid, amount in the whole to the ſum of 105 *l.* *And* the ſaid *J.* is ready, and now offereth to ſet againſt the demands of the ſaid *J.* ſo much thereof as is ſufficient to ſatisfy his ſaid demands in this action, according to the form of the ſtatutes in that caſe lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt him, *&c.* *J. Agar.*

Mich. 24 *Geo.* 2. *B. R.*

W. R. againſt *R. B.* Debt on a Bond for 200 *l.* dated 24 *Nov.* 20 *Geo.* 2.

Imparlance.

AND now at this day, to wit, on *Wedneſday* next after the octaves of of St. *Hilary* in this ſame term, until which day the ſaid *Richard* had licence to imparl to the ſaid bill, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter* come as well the ſaid *William* by his attorney aforeſaid, as the ſaid *Richard* by *Roger Altham* his attorney, and the ſaid *Richard* defendeth the force and injury, when, *&c.* and prayeth oyer of the writing aforeſaid; and it is read to him; he likewiſe prayeth oyer of the condition of the ſaid writing; and it is read to him in theſe words,

Oyer prayed of the bond, and of the condition.

words, to wit, The condition of this obligation is ſuch, that if the above bounden *Richard B.* his heirs, executors, adminiſtrators or aſſigns, ſhall and do well and truly pay, or cauſe to be paid unto the above named *William R.* his executors, adminiſtrators or aſſigns, the full ſum of 100 *l.* of good and lawful money of *Great Britain*, with lawful intereſt for the ſame, on or before the 24th day of *May* next, without fraud or further delay; then this obligation to be void, and of none effect, or elſe to remain in full force and virtue; which being read and heard, the ſaid *Richard* ſaith, that the ſaid *William* ought not to have or maintain his ſaid action thereof againſt him; becauſe he ſaith, that at the time of exhibiting the ſaid bill of the ſaid *William* againſt the ſaid *Richard*, there was due to the ſaid *William* upon and by Virtue of the ſaid writing obligatory, the whole principal ſum of 100 *l.* mentioned in the condition of the ſaid writing obligatory, and the ſum of 19 *l.* 12 *s.* 5 *d.* $\frac{3}{4}$ for the intereſt thereof, and no more, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid. And the ſaid *Richard* further ſaith, that the ſaid *William* at the time of his exhibiting the ſaid bill againſt him the ſaid *Richard*, and before, at *London* aforeſaid in the pariſh and ward aforeſaid, was and ſtill is indebted to the ſaid *Richard* in a larger ſum of money than the monies due from the ſaid *Richard* to the ſaid *William*, upon the ſaid writing obligatory by the condition

The condition.

Bar.

What due on the bond.

That plaintiff indebted to defendant in a large ſum,

for wheat ſold. condition thereof, to wit, in the ſum of 148 *l.* 15 *s.* of lawful money of *Great Britain*, for 600 acres of ſtanding wheat before then ſold by the ſaid *Richard* to the ſaid *William*, and at the ſpecial inſtance and requeſt of the ſaid *William*; and in the further ſum of 148 *l.* 15 *s.* of like lawful money, for divers goods, wares and merchandizes before then ſold and delivered by the ſaid *Richard* to the ſaid *William*, at the ſpecial inſtance and requeſt of the ſaid *William*; which ſaid ſums of 148 *l.* 15 *s.* and 148 *l.* 15 *s.* do amount together to the ſum of 297 *l.* 10 *s.* of like lawful money; which ſum of 297 *l.* 10 *s.* exceeds the ſaid principal and intereſt ſo due on the ſaid writing obligatory mentioned in the ſaid declaration from the ſaid *Richard* to the ſaid *William*; and out of which ſum of 297 *l.* 10 *s.* the ſaid *Richard* is willing and hereby offereth to allow to the ſaid *William*, all the principal and intereſt due to the ſaid *William* on the ſaid writing obligatory, according to the form of the ſtatute in ſuch caſe made and provided; And this he is ready to verify: Wherefore he prayeth judgment whether the ſaid *William* ought to have or maintain his ſaid action thereof againſt him, *&c.*

And for goods, wares and merchandizes ſold and delivered.

E. Umfreville.

Replication, is not indebted. **And** the ſaid *William* ſaith, that by reaſon of any thing by the aforeſaid *Richard* in pleading above alledged, he ought not to be barred from having his ſaid action againſt the ſaid *Richard*, becauſe he ſaith, that he

the

the ſaid *William* at the time of exhibiting his ſaid bill againſt the ſaid *Richard*, was not nor is indebted to the ſaid *Richard* in the aforeſaid ſeveral ſums of money, or either of them, or any part thereof, in manner and form as the ſaid *Richard* hath in pleading above alledged; And this he prayeth may be inquired of by the country, *&c.*

John Ford.

Plea non aſſumpſit.

And the ſaid *J. M.* by *W. M.* her attorney, cometh and defendeth the wrong and injury when, *&c.* and ſaith, that ſhe did not undertake and promiſe in manner and form as the ſaid *T. P.* above declareth againſt her; and of this ſhe putteth herſelf upon the country, *&c.* And the ſaid *Thomas* doth the like, *&c.* And the ſaid *J.* by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, further ſaith, That the ſaid *Thomas* ought not to have his ſaid action againſt her, becauſe ſhe ſaith, that ſhe did not promiſe or undertake in manner and form as the ſaid *Thomas* hath above complained againſt her, at any time within ſix years next before the day of exhibiting the aforeſaid bill of him the ſaid *Thomas*; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment if the ſaid *Thomas* ought to have or maintain his aforeſaid action again her, *&c.* *And* for further plea in this behalf the ſaid *J.* by like leave of the court here for this purpoſe firſt had and obtained, according to the

Iſſue.

Second plea non aſſumpſit infra ſex annos.

Third plea of mutual debts owing from plaintiff's teſtator, and plaintiff as his executor, to defendant.

the form of the ſtatute in ſuch caſe lately made and provided, ſaith, that the ſaid *Thomas* ought not to have or maintain his aforeſaid action againſt her, becauſe ſhe ſaith, that the ſaid *J. P.* in his life-time, and at the time of his deceaſe, was indebted to the ſaid *J.* and the ſaid *Thomas* as executor of the laſt will and teſtament of the ſaid *J.* as aforeſaid, at the time of exhibiting the bill aforeſaid, was and ſtill is indebted to the ſaid *J.* in more money than is due or owing from her the ſaid *J.* to the ſaid *Thomas P.* as executor as aforeſaid, upon or by reaſon of the ſeveral promiſes and undertakings in the ſaid declaration mentioned; that is to ſay, in the ſum of 400*l.* of lawful money of *Great Britain*, for ſo much money before that time lent and advanced by the ſaid *J.* to the ſaid *J.* in his life-time, at his requeſt: And alſo in the further Sum of 300*l.* of like lawful money, for ſo much money before that time paid, laid out and expended by the ſaid *J.* for the ſaid *J.* in his life-time, at his requeſt: And alſo in the further Sum of 400*l.* of like lawful money, for ſo much money before that time had and received by the ſaid *J.* in his life-time, for the uſe of the ſaid *J.* And alſo in the further ſum of 200*l.* for work and labour performed and done by the ſaid *J.* and her ſervants, for the ſaid *J. P.* in his life-time, at his ſpecial inſtance and requeſt, that is to ſay, at *H.* aforeſaid; which ſaid ſeveral ſums of money are ſtill unpaid to the ſaid *J.* and exceed the money due and owing

owing from the ſaid *J.* to the ſaid *Thomas P.* as executor as aforeſaid, upon or by reaſon of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to wit, at *H.* aforeſaid; and the ſaid *J.* is ready and now offereth to ſet off ſo much of the ſaid ſeveral ſums ſo due and owing to the ſaid *J.* as aforeſaid, as is ſufficient to ſatisfy the money or damages juſtly due or payable to the ſaid *Thomas* as executor as aforeſaid, by reaſon of the ſaid ſeveral promiſes in the ſaid declaration mentioned; And this the ſaid *J.* is ready to verify: And therefore prayeth judgment if the ſaid *Thomas* ought to have or maintain his ſaid action againſt her, *&c.* *J. Y.*

Replication quod aſſumpſit infra ſex annos.

And the ſaid *Thomas*, as to the ſaid plea of the ſaid *J.* by her ſecondly above pleaded in bar, ſaith, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged, he ought not to be barred from having his ſaid action againſt her, becauſe he ſaith, that the ſaid *J.* did promiſe and undertake in manner and form as the ſaid *Thomas* hath above complained againſt her, within ſix years next before the day of exhibiting the ſaid bill of the ſaid *Thomas*, to wit, at *H.* aforeſaid; And this he prayeth may be inquired of by the country: *And* the ſaid *J.* doth the like. *Iſſue.*

Replication (proteſtando *that the teſtator was not indebted*, &c.) *that plaintiff as executor is*

And the ſaid *Thomas*, as to the ſaid plea of the ſaid *J.* by her laſtly above pleaded in bar ſaith, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged, he ought not to be barred

not indebted to defendant in more than is due from her to plaintiff as executor.

barred from having and maintaining his ſaid action againſt her, becauſe proteſting that the ſaid *J. P.* in his life-time, and at the time of his death, was not indebted to the ſaid *J.* in manner and form as the ſaid *J.* hath in and by her ſaid plea above alledged; Nevertheleſs for replication the ſaid *Thomas* ſays, that he the ſaid *Thomas*, as executor of the laſt will and teſtament of the ſaid *J.* was not nor is indebted to the ſaid *J.* in more money than is due and owing from her the ſaid *J.* to the ſaid *Thomas* as executor, as aforeſaid, upon the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as the ſaid *J.* hath in and by her ſaid plea in that behalf above alledged; And this he prayeth may be inquired of by the country; *And* the ſaid *J.* doth the like, *&c. Therefore* as well to try this iſſue, as the ſaid ſeveral other iſſues between the ſaid parties abovejoined, *&c.*

Iſſue. Venire awarded.

Plea in debt on a bond.

And the aforeſaid *S.* by *M. H.* his attorney cometh and defendeth the force and injury when, *&c. And* prayeth oyer of the writing obligatory aforeſaid; and it is read to him: He prayeth alſo oyer of the condition of the ſame writing obligatory; and it is read to him in theſe words, to wit,

Oyer.

The ſtatute of uſury.

The condition, *&c. Which* being heard and read, the aforeſaid *S.* ſaith, that he by virtue of the writing obligatory aforeſaid ought not to be charged with the debt aforeſaid, becauſe he ſaith, that after the 29th day of *September* in the year of our Lord 1714. to wit, on the aforeſaid 17th day of *Auguſt* in the

the year of our Lord 1734. aforeſaid, at *W.* aforeſaid, it was corruptly agreed between the aforeſaid *J.* and the ſaid *S.* that the ſaid *J.* ſhould lend to the ſaid *S.* the ſum of 20*l.* and ſhould forbear and give a day of payment thereof until the 12th day of *November* next enſuing; and that the ſaid *S.* for the loan of the ſaid 20*l.* and for the forbearance and giving a day of payment thereof for the time aforeſaid, ſhould give and pay to the ſaid *J.* the ſum of 20*s.* a month; and that the ſaid *S.* ſhould become bound to the ſaid *J.* in a certain writing obligatory, as a ſecurity to the ſaid *J.* for the payment of the ſaid ſum of 20*l.* according to the form and effect of the corrupt agreement aforeſaid; and afterwards, to wit, on the aforeſaid 17th day of *Auguſt* in the year of our Lord 1734. aforeſaid, at *W.* aforeſaid, the aforeſaid *J.* in proſecution of the corrupt agreement aforeſaid, did lend to the aforeſaid *S.* the aforeſaid ſum of 20*l.* and the aforeſaid writing obligatory, in the declaration aforeſaid above mentioned, was thereupon then and there by the ſaid *S.* ſealed and delivered to the ſaid *J.* as the deed of the ſaid *S.* as a ſecurity for the payment of the ſaid ſum of 20*l.* ſo lent according to the form and effect of the corrupt agreement aforeſaid, and the ſaid *S.* in performance and according to the form and effect of the aforeſaid corrupt agreement, afterwards, to wit, on the 15th day of *November* in the year of our Lord 1734. aboveſaid, at *W.* aforeſaid, paid to the ſaid *J.* the ſum of

20 *s.*

20*s.* a month for the loan and forbearance of the aforeſaid 20*l.* until the aforeſaid 12th day of *November*; and the ſaid *J.* then and there took and accepted of the ſaid *S.* the ſaid ſum of 20*s.* a month for the loan and forbearance of the aforeſaid 20*l.* until the ſaid 12th day of *November*, which ſaid 20*s.* a month for the loan and forbearance of the ſaid 20*l.* for the ſaid time, exceedeth the rate of 5*l.* for the forbearance of 100*l.* for a year, contrary to the form of the ſtatute in ſuch caſe made and provided, whereby the writing obligatory in the declaration aforeſaid above mentioned, by force and virtue of the above ſtatute in ſuch caſe made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *S.* by virtue of the writing obligatory aforeſaid, ought to be charged with the debt aforeſaid, *&c.*

Replication. Lil. Ent. 184.

And the ſaid *J.* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action againſt the ſaid *S.* becauſe he ſaith that it was not corruptly agreed between the aforeſaid *J.* and the ſaid *S.* in manner and form as the ſaid *S.* hath above in pleading alledged: And this he prayeth may be inquired of by the country, *&c.* *And* the ſaid *S.* doth the like. *Therefore*, &c.

Plea in debt on a bond, that the obligor was non compos mentis.

And the ſaid *A. D.* by *P. L.* her attorney cometh and defendeth the force and injury when, *&c.* and ſaith that ſhe ought not to be charged with the ſaid debt by virtue of the writing aforeſaid, becauſe ſhe ſaith, that the

the ſaid *E. D.* at the time of the ſealing and delivering the ſaid writing mentioned in the ſaid declaration, was not of ſound mind, but was *non compos mentis*; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if ſhe ought to be charged with the ſaid debt by virtue of the writing aforeſaid, *&c.*

Replication.

And the ſaid *F. N.* ſaith that he, by any thing before alledged by the ſaid *A. D.* in pleading, ought not to be precluded from having or maintaining his aforeſaid action thereupon againſt her the ſaid *A. D.* becauſe he ſaith that the ſaid *E. D.* at the time of the ſealing and delivering of the ſaid writing mentioned in the ſaid declaration, was of ſound mind, and was *compos mentis*, to wit, on the —— day of ——, in the year of our Lord 1737. aforeſaid, in the county aforeſaid: And this he prayeth may be inquired of by the country; *And* the ſaid *A.* likewiſe. *Therefore*, &c.

Plea by an heir, in debt on a bond, no lands deſcended.

And the ſaid *W. H.* by *C. S.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he as ſon and heir of the ſaid *G.* his father, by virtue of the ſaid writing ought not to be charged with the ſaid debt, becauſe he ſaith that he the ſaid *W.* on or before the day of ſuing out the original writ of the ſaid *T.* had not any lands or tenements by hereditary deſcent from the ſaid *G.* his father in the fee-ſimple; And this he is ready to verify: Wherefore he prayeth judgment, if he as ſon and heir of the ſaid *G.* his father, by virtue of the

ſaid writing ought to be charged with the ſaid debt, *&c.*

Replication. *And* the ſaid *T. H.* ſaith, that he by any thing in the ſaid plea alledged ought not to be barred from having his ſaid action againſt the ſaid *W.* becauſe he ſaith that the ſaid *W.* on or before the day of ſuing out the ſaid original writ of the ſaid *T.* had ſeveral lands and tenements by hereditary deſcent from the ſaid *G.* his father in fee-ſimple, to wit, in the county of *Lincoln* aforeſaid; And this he prayeth may be inquired of by the country: *And* the ſaid *W.* likewiſe.

Plea, in debt on a bond, defendant is not deviſee. And the ſaid *E.* by *G. N.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have his aforeſaid action againſt him, becauſe he ſaith that he the ſaid *E.* is not deviſee of the ſaid *G.* of any lands or tenements of the ſaid *G.* whereof the ſaid *G.* at the time of his deceaſe was ſeiſed in fee-ſimple in poſſeſſion, reverſion or remainder, or had power to diſpoſe of the ſame by his laſt will or teſtament; And this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *T.* ought to have his aforeſaid action againſt him, *&c.*

Replication. *And* the ſaid *T. H.* as to the aforeſaid plea of the ſaid *E. H.* by him above pleaded in bar, ſaith, that he by any thing therein alledged ought not to be barred from having his ſaid action againſt the ſaid *E.* becauſe he ſaith that he the ſaid *E.* is deviſee of the ſaid *G.* of ſeveral lands and tenements of the ſaid

G. whereof the ſaid *G.* was ſeiſed in fee-ſimple, to wit, in the county of *L.* aforeſaid: And this he prayeth may be inquired, *&c.*

And the ſaid *J. M.* by ——— his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *J. R.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith that he ought not to be charged with the ſaid debt by virtue of the ſaid writing obligatory, becauſe he ſaith that he the ſaid *J. M.* on the 27th day of *May* in the 12th year of the reign of our late ſovereign lord *William* III. late king of *England*, &c. at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, made and ſealed the ſaid writing, and then and there delivered it to one *E. B.* as an eſcrow, to be ſafely kept, upon the condition following, to wit, that if the ſaid *J. R.* upon the 20th day of *June* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, ſhould deliver to one *S. B.* one hundred yards of woollen cloth called kerſeys, and two hundred yards of linen cloth in good and merchandizable condition, to be exported by the ſaid *S.* in the ſhip called the *Fiſher*, to *Virginia* in parts beyond the ſeas, that then the ſaid *J. M.* ſhould deliver the ſaid writing obligatory to the ſaid *J. R.* as the deed of the ſaid *J. M.* otherwiſe not. *And* the ſaid *J. M.* ſaith, that the ſaid *J. R.* upon the 20th day of *June* in the year aforeſaid, did not deliver to the ſaid *S.* the ſaid hundred yards of woollen

Plea, bond delivered as an eſcrow, upon condition. Lil. Ent. 186. 1 Inſt. 303. 9 Co. 137. 1 Salk. 274. Pract. Reg. 317, 540.

Condition not performed.

len cloth, or two hundred yards of linen cloth; *And* ſo the ſaid *J. M.* ſaith, that the ſaid writing obligatory brought here into court, by the ſaid *J. M.* delivered in form aforeſaid, the ſaid condition not being performed, is not his deed; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J. R.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Et ſic non eſt factum.

Demurrer. *And* the ſaid *J. R.* ſaith that he, by any thing by the ſaid *J. M.* above in pleading alledged, ought not to be precluded from having his ſaid action thereupon againſt the ſaid *J. M.* becauſe he ſaith that the ſaid plea above pleaded by the ſaid *J. M.* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to preclude the ſaid *J. R.* from having his ſaid action thereupon againſt the ſaid *J. M.* to which ſaid plea he the ſaid *J. R.* has no need, and is not bound by the law of the land in any manner to anſwer; And this he is ready to verify: Wherefore, for default of a ſufficient anſwer in this behalf, he the ſaid *J. R.* prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged by him.

Cauſes of demurrer. *And* for cauſes of demurring in law in this behalf, the ſaid *J. R.* according to the form of the ſtatute in ſuch caſe lately made and provided, ſheweth and demonſtrateth to the court here, that the ſaid *J. M.* doth not conclude his ſaid plea to the country as he ought,

and

and that the ſaid plea is not iſſuable, and wanteth form, *&c.*

St. John Broderick.

And the ſaid *J. M.* ſaith, that the ſaid plea by him the ſaid *J. M.* above pleaded in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to preclude the ſaid *J. R.* from having his ſaid action thereupon againſt him the ſaid *J. M.* which ſaid plea, and the matter therein contained, he the ſaid *J. M.* is ready to verify and prove as the court, *&c.* And becauſe the ſaid *J. R.* doth not anſwer to the ſaid plea, and hath not hitherto in any manner denied the ſame, he the ſaid *J. M.* as before prayeth judgment, and that the ſaid *J. R.* may be barred from having his ſaid action thereupon againſt him the ſaid *J. M.* &c. *But* becauſe the court of our ſaid lady the queen now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen at *W.* until —— next after ——, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not yet adviſed thereof. *Joinder.* *Continuance.*

And the ſaid *J.* by *G. L.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe as to the ſaid 13*l.* in the ſaid declaration firſt mentioned, parcel of the ſaid 26*l.* and alſo as to 8*l.* 15*s.* *Bar in debt for rent, as to part,* non debet. Lil. Ent. 164. Pr. Reg. 562.

and 9*d.* parcel of the ſaid 13*l.* in the ſaid declaration ſecondly mentioned, reſidue of the ſaid 26*l.* the ſaid *J.* ſaith that he doth not owe to the ſaid *J. S.* the ſaid 13*l.* or the ſaid 8*l.* 15*s.* and 9*d.* or any part thereof; And of this the ſaid *J.* putteth himſelf upon the country: *And* the ſaid *J.* doth ſo likewiſe. *And* as to 4*l.* 4*s.* and 3*d.* reſidue of the ſaid 13*l.* in the ſaid declaration ſecondly mentioned (the ſaid 13*l.* laſt ſpecified being the ſaid reſidue of the ſaid 26*l.* and being the ſaid rent for the ſaid demiſed premiſſes in the ſaid declaration ſecondly ſpecified) the ſaid *J.* ſaith, that well and true it is, that the ſaid 4*l.* 4*s.* and 3*d.* of the ſaid rent upon the ſaid demiſe in the ſaid declaration ſecondly mentioned, at the birth of our Lord Chriſt in the year of our Lord 1701. aforeſaid, were in arrear, and ſtill are in arrear; but the ſaid *J.* further ſaith, that he the ſaid *J.* upon the ſaid feaſt of the birth of our Lord Chriſt in the year of our Lord 1701. aforeſaid, by the ſpace of half an hour next before and until the ſetting of the ſun of the ſame feaſt, was ready at the ſaid other houſe in the ſaid declaration mentioned, and then and there offered to pay to the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d.* which he ought to have paid there to the ſaid *J.* at the ſaid feaſt, according to the form and effect of the ſaid covenant in that behalf mentioned in the ſaid declaration; and that the ſaid *J.* or any other lawfully authorized on the behalf of the ſaid *J.* was not then and there ready to receive of the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d.* and

Iſſue.

As to the reſidue, a tender.

5 Co. 114.
2 Salk. 622, 624.
Lilly's Entr. 476.

that

that the ſaid *J.* on the ſaid feaſt-day, and at all times after the ſaid feaſt of the birth of our Lord Chriſt in the ſaid year of our Lord, hitherto was ready, and ſtill is ready to pay to the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d.* and he bringeth the ſame here into court, ready to pay to the ſaid *J.* if he the ſaid *J.* is willing to receive the ſame; All and ſingular which things the ſaid *J.* is ready to verify, *&c.* Wherefore he prayeth judgment, if the ſaid *J.* ought to proceed for damages againſt the ſaid *J.*

R. Acherley.

Plea in debt on an arbitration bond.

And the ſaid *J.* by *R. S.* her attorney cometh and defendeth the force and injury when, *&c.* and prayeth oyer of the ſaid bond; and it is read to her, *&c.* ſhe alſo prayeth oyer of the condition of the ſaid bond; and it is read to her in theſe words, to wit, The condition, *&c.* which being read and heard, the ſaid *J.* ſaith that the ſaid *J. A.* ought not to have his ſaid action againſt her, becauſe ſhe ſaith that the ſaid arbitrators in the ſaid condition of the ſaid bond named, did not make any award of or upon the premiſſes in writing indented under their hands and ſeals, ready to be delivered to the ſaid parties on or before the 29th day of *October* next enſuing the date of the ſaid bond; neither did the ſaid arbitrators chuſe any umpire for the ending and compoſing the differences aforeſaid within the time in the condition of the ſaid bond limited in that reſpect; And this ſhe is ready to verify:

Oyer.

No award made.

Wherefore ſhe prayeth judgment, if the ſaid *J.* ought to have his ſaid action againſt her, *&c.*

M. Wright.

Replication, award ſet forth.

And the ſaid *J.* ſaith, that he ought not, by reaſon of any thing above alledged by the ſaid *J.* to be barred from having his ſaid action againſt her, becauſe he ſaith, that on the 29th day of *October* in the condition above-mentioned, the ſaid *J. W.* and *T. S.* the arbitrators named in the ſaid condition, having taken upon them the burthen of the ſaid award, and having fully examined and duly conſidered the proofs and allegations of both the ſaid parties, for the ſettling amity and friendſhip between them, at the city of *Bath* aforeſaid, in the county aforeſaid, made and publiſhed their award and order of and concerning the premiſſes ſpecified in the aforeſaid condition, in writing indented under their hands and ſeals, in manner and form following, (that is to ſay) That all actions, ſuits, quarrels, controverſies and demands whatſoever had, moved, ariſen, and depending between the ſaid parties, for any manner of cauſe whatſoever, to the day of the date of the ſaid award, ſhould ceaſe, and be no further proſecuted, and that each of the ſaid parties ſhould pay and bear his and her own coſts and charges in any wiſe relating to or concerning the ſaid premiſſes; And the ſaid arbitrators in and by their ſaid award did further award, order, and finally determine, that the ſame *J. S.* her heirs, executors or adminiſtrators,

adminiſtrators, ſhould pay to the ſaid *J. A.* his executors or adminiſtrators, the full ſum of 29*l.* of good and lawful money of *Great Britain*, without any deduction whatſoever, at one intire payment, on the 30th day of *January* then next enſuing, at eleven o'clock in the forenoon of the ſame day, in the church-porch of the pariſh of *W.* in the county of *S.* and laſtly the ſaid arbitrators, in and by their ſaid award, did award, order, and finally determine, that on payment of the ſaid ſum of 29*l.* the ſaid *J. A.* and *J. S.* ſhould in due form of law execute each to the other of them general releaſes, ſufficient in the law for the releaſing each to the other of them, his and her heirs, executors and adminiſtrators, all actions, ſuits, arreſts, cauſe and cauſes of action and ſuit, quarrels, controverſies and demands whatſoever, for, touching or concerning any matter, cauſe or thing whatſoever, from the beginning of the world until the ſaid —— day of —— in the year of our Lord —— aforeſaid, as by the ſaid award now produced here in court more fully appeareth; And the ſaid *J. A.* in fact ſaith, that altho' he hath performed and fulfilled every thing ſpecified in the aforeſaid award on his part to be performed and fulfilled, nevertheleſs the ſaid *J.* hath not paid to him the ſaid *J.* the ſaid ſum of 29*l.* on the ſaid 30th day of *January* next after the date of the ſaid award, which ſhe ought to have paid to him on that day, according to the form and effect of the ſaid award; And this he is ready to verify: Wherefore he prayeth judgment,

judgment, and his debt, together with his damages by means of the detention of the ſaid debt, to be adjudged unto him.

John Belfield.

Demurrer. *And* the ſaid *J.* ſaith that the replication aforeſaid of the ſaid *J.* in manner and form aforeſaid above made, and the matter therein contained, are inſufficient in law for the ſaid *J* to have and maintain his ſaid action againſt her, and that ſhe the ſaid *J.* is not neceſſitated or obliged by the law to make any anſwer to the ſaid replication in manner and form aforeſaid made; And this ſhe is ready to verify: Wherefore, for want of a ſufficient replication in this reſpect, ſhe the ſaid *J.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt her, *&c.*

Joinder. *And* the ſaid *J.* for that he in his replication aforeſaid hath alledged ſufficient matter in law for him the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *J.* which matter he the ſaid *J.* is ready to verify, and which matter the ſaid *J.* hath not in any manner denied, nor anſwered the ſame, but refuſeth to admit the proof thereof, the ſaid *J.* as before prayeth judgment, and his debt aforeſaid, together with his damages by means of detaining the ſame debt, to be adjudged to him, *&c.*

Plea in treſpaſs and aſſault againſt three. And the ſaid *J. S. G.* and *J.* by *T. C.* their attorney come and defend the force and injury when, *&c.* *And* the ſaid *G.* and *J.* ſay that they are not guilty of the treſ-

Two plead not guilty.

paſs

paſs and aſſault aforeſaid, in manner and form as the ſaid *J.* in his ſaid declaration hath above complained againſt them; And of this they put themſelves upon the country: *And* the ſaid *J.* doth the ſame. *And* the ſaid *J. S. as to* the coming with force and arms, or any thing which is againſt the peace of our preſent lord the king, and alſo as to the whole treſpaſs aforeſaid, except the ſaid aſſault on the ſaid *J.* beating and evilly treating him, ſaith that he is not guilty thereof, as the ſaid *J.* above hath complained againſt him: And thereupon he putteth himſelf upon the country: *And* the ſaid *J.* doth the ſame. *And as to* the ſaid aſſault of the ſaid *J.* and evilly treating of him, above ſuppoſed to be done, the ſaid *J. S.* ſaith that the ſaid *J.* ought not therefore to have his ſaid action againſt him, becauſe he ſaith that before the ſaid time when, *&c.* and at the ſaid time when, *&c.* and afterwards, he the ſaid *J. S.* was maſter of a certain ſhip called the *Orford*, and had the conduct, direction and management of the ſaid ſhip lawfully committed to him, at *London* aforeſaid, in the pariſh and ward aforeſaid; and that the ſaid *J.* at the ſaid time when, *&c.* at *London* aforeſaid, in the pariſh and ward aforeſaid, oppoſed the ſaid *J.* and obſtructed him in the diſcharge of his duty as maſter of the ſaid ſhip, and ſo placed himſelf in the way of the ſaid *J. S.* that the ſaid *J.* could not diſcharge his duty aforeſaid without the ſaid *J.* was removed from the place where he then ſtood; and the ſaid *J.* then and there ſo requeſted the ſaid

The third, as to part, pleads not guilty.

As to the reſidue, that defendant was maſter of a ſhip, and plaintiff oppoſed and obſtructed him in the diſcharge of his duty.

ſaid *J.* to remove himſelf, and to ſtand out of his way, ſo that the ſaid *J.* might diſcharge his duty aforeſaid, which the ſaid *J.* did not do, but continued to obſtruct the ſaid *J.* and to ſtand in his way as aforeſaid; whereupon, becauſe the ſaid *J.* would not remove himſelf and ſtand out of the way of the ſaid *J.* at his requeſt, but continued to obſtruct him in the diſcharge of his ſaid duty as aforeſaid, he the ſaid *J.* gently laid his hands on the ſaid *J.* to cauſe him to remove and to ſtand out of his way, for the diſcharge of the duty of the ſaid *J.* as maſter of the ſaid ſhip as aforeſaid; which are the ſame aſſault upon the ſaid *J.* beating and evil treating of him, whereof the ſaid *J.* hath above againſt him declared; And this he is ready to verify: Wherefore the ſaid *J. S.* prayeth judgment, if the ſaid *J.* ought therefore to have his ſaid action againſt him, *&c.*

Bar in treſpaſs. Preſcription for a way through the plaintiff's cloſe.

And the ſaid *J.* by *L. M.* his attorney cometh and defendeth the force and injury when, *&c.* And as to the coming with force and arms, *&c.* and alſo the whole treſpaſs aforeſaid, except the breaking and entering the ſaid cloſe, and treading down and conſuming the ſaid graſs with his feet in walking, and treading down and conſuming other graſs with his cattle, he ſaith that he is in nothing guilty thereof, as the ſaid *T.* above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *T.* doth ſo likewiſe. *And* as to the breaking and entering the ſaid cloſe, and treading down

down and consuming the grass with his feet in walking, and treading down and consuming other grass with his cattle, the said *J.* saith that the said *T.* ought not to have his said action thereupon against him, because he saith that the said close of the said *T.* at the said time in which, *&c.* lay, and still lieth in a certain common field in *Usborn M.* aforesaid, called *Kirkfield*, lying contiguous to a certain common way there called a common balk, on the north-part and to a certain close in *Usborn M.* aforesaid called *Flask close*, on the south-part of which said close called *Flask close* one *A. B.* long before the time in which, *&c.* was seised in his demesne as of fee, and that the said *A. B.* and all those whose estate he had in the said close, from the time to the contrary whereof the memory of man is not, have had, used and enjoyed a certain way for themselves, their servants, farmers and tenants there, with their cattle, carts and carriages whatsoever, at all times of the year, at their pleasure, from the said common way in, by and through the said close in which, *&c.* to the said close called *Flask close*, and so back again from the said close, in, by and though the said close in which, *&c.* into the said common way; and the said *A. B.* being so seised thereof, afterwards and before the said time in which, *&c.* at *Usborn M.* aforesaid died, after whose death the said close called *Flask close* descended to *W. B.* being then and still under the age of 14 years, as son and heir of the said *A. B.* upon which *Frances B.* widow,

mother

mother and guardian of the ſaid *W. B.* entered into the ſaid cloſe called *Flask cloſe*, in the right and to the uſe of the ſaid *W. B.* and afterwards and before the ſaid time in which, *&c.* to wit, on the ——— day of, *&c.* at *Usborn M.* aforeſaid, the ſaid *F.* demiſed the ſaid cloſe called *Flask cloſe* to the ſaid *J.* To hold to the ſaid *J.* and his aſſigns for the term of one year thence next enſuing, and ſo from year to year, ſo long as it ſhould pleaſe both parties, by virtue of which ſaid demiſe the ſaid *J.* entered into the ſaid cloſe called *Flask cloſe*, and was and ſtill is poſſeſſed thereof; whereby the ſaid *J.* on the 10th day of *May* in the 29th year aforeſaid, and at divers days and times afterwards, and before the 1ſt day of *June* then next enſuing went from the ſaid common way with his cattle, in, by and through the ſaid cloſe of the ſaid *T.* to the ſaid cloſe called *Flask cloſe*, and ſo returned back from the ſame cloſe in, by and through the ſaid cloſe of the ſaid *T.* into the common way aforeſaid, uſing his ſaid way, doing as little damage as he could in the ſaid cloſe of the ſaid *T.* which ſaid breaking the ſaid cloſe in which, *&c.* for the cauſe aforeſaid, and treading down and conſuming the ſaid graſs with his feet in walking, and with his ſaid cattle in the ſaid cloſe in uſing the ſaid way, is the ſame breaking and entering the ſaid cloſe in which, *&c.* and treading down and conſuming the ſaid graſs, whereof the ſaid *T.* above complaineth againſt him; And this he is ready to verify: Wherefore he prayeth judgment,

judgment, if the ſaid *T.* ought to have his ſaid action thereupon againſt him.

Plea, juſtification of an aſſault, the defendant being maſter of a ſloop, and the plaintiff a ſailor, and refuſing to do his duty.

And the ſaid *G. L.* by *J. G.* the younger his attorney cometh and defendeth the force and injury when, *&c.* and as to the coming with force and arms, and alſo the whole treſpaſs aforeſaid, except the aforeſaid aſſaulting and beating, ſaith that he is in nothing guilty thereof; And of this he putteth himſelf upon the country: *And* the ſaid *G. A.* doth ſo likewiſe, *&c.* *And* as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *G. L.* ſaith that the ſaid *G. A.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that for the ſpace of ſeveral months next before the time in which the ſaid treſpaſs is ſuppoſed to be done, and alſo at the ſaid time in which, *&c.* the ſaid *G. L.* was maſter, and the ſaid *G. A.* one of the mariners of a certain ſhip called the *Union* frigate, which ſaid ſhip at the time in which, *&c.* was upon the high ſea (to wit, at the pariſh aforeſaid) in her voyage which ſhe was making to *Leghorn*, and other places in the *Mediterranean* ſea, and from thence back to *London*; and that the ſaid *G. A.* at the ſaid time in which, *&c.* refuſing to do his duty in and about the neceſſary navigating and governing the ſaid ſhip in her ſaid voyage, and deſpiſing the orders of the ſaid *G. L.* in that behalf, and intending to ſow and ſtir up ſedition, tumults and mutiny amongſt the other mariners of the ſaid ſhip againſt the ſaid *G. L.* being his maſter as aforeſaid, the ſaid *G. L.* that he might keep the ſaid *G. A.*

to

to his duty and obedience, moderately ſtruck the ſaid *G. A.* with his hand, as it was lawful for him to do, which is the ſame reſidue of the ſaid treſpaſs whereof the ſaid *G. A.* above complaineth; And this he is ready to verify: Wherefore the ſaid *G. L.* prayeth judgment, if the ſaid *G. A.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Plea, bar in treſpaſs, as to part not guilty.

And the ſaid *B.* by —— his attorney cometh and defendeth the force and injury when, *&c.* and as to the coming with force and arms, or whatſoever that is againſt the peace of our Lord the preſent king, as alſo the whole treſpaſs aforeſaid, with the cattle aforeſaid, except with one gelding and one mare of the cattle aforeſaid, above ſuppoſed to be done, the ſaid *B.* ſaith that he is not guilty thereof; And of this he putteth himſelf upon the country: *And* the ſaid *A.* doth ſo likewiſe, *&c. And* as to the reſidue of the ſaid treſpaſs, with the one gelding and one mare aforeſaid above ſuppoſed to be done, the ſaid *B.* ſaith that the ſaid *A.* ought not to have his ſaid action againſt him, becauſe he ſaith that the ſaid cloſe, and alſo the place in which the ſaid treſpaſs is above ſuppoſed to be done, are, and at the ſaid time in which, *&c.* were 40 acres of land with the appurtenances in *D.* aforeſaid, which ſaid 40 acres of land with the appurtenances are, and at the ſaid time in which, *&c.* and alſo from the time to the contrary whereof the memory of man is not, were parcel of a certain common field called *L.* in *D.* aforeſaid.

As to reſidue, juſtifies for common by preſcription, as a burgeſs of the borough of D.

Mellor v. Walker, *entr.* Hil. 21 & 22 Car. 2. ro. 1283.
1 Vent. 21, 92.
2 Saund. 4.
1 Sid. 462.
2 Keb. 658, 676, 858.

And

And the ſaid *B.* further ſaith, that the borough of *D.* in the county of *D.* is an antient borough, and that he the ſaid *B.* is, and at the ſaid time in which, *&c.* and long before, was and ſtill is one of the burgeſſes of that borough, and that the burgeſſes of that borough, from the time to the contrary whereof the memory of man is not, until the 11th day of *July* in the 14th year of the reign of the lord *Charles* the firſt, late king of *England*, &c. were a body politic and corporate by the name of the bailiffs and burgeſſes of the borough of *D.* and by that name uſed to implead and be impleaded. *And* the ſaid *E.* further ſaith, that in and upon the ſaid 11th day of *July* in the 14th year of the reign of the lord *Charles* I. late king of *England*, &c. the ſaid lord king *Charles* I. by his letters patent made under his great ſeal of *England*, bearing date at *Weſtminſter* the 11th day of *July* in the ſaid 14th year of his reign, conſtituted and created the bailiffs and burgeſſes of the borough aforeſaid to be from thenceforth for ever a body politic and corporate, by the name of mayor and burgeſſes of the borough of *D.* in the county of *D.* as by the ſaid letters patent which the ſaid *B.* bringeth here into court more fully appeareth. *And* the ſaid *B.* further ſaith, that the ſaid bailiffs and burgeſſes, from the time to the contrary whereof the memory of man is not, until the ſaid 11th day of *July* in the ſaid 14th year of the reign of the ſaid lord *Charles* I. and the mayor and burgeſſes of the ſaid borough,

Letters patent.

Profert.

rough, upon the ſaid 11th day of *July* in the 14th year aforeſaid, and continually afterwards hitherto, have had, and for the whole time aforeſaid have been uſed to have, for themſelves and every burgeſs of the ſaid borough, common of paſture in the ſaid field called *L.* whereof, *&c.* for all their cattle commonable within the ſaid borough of *D.* levant and couchant, to wit, in every two years coming together when the ſaid field called *L.* whereof, *&c.* in which, *&c.* or any part thereof was ſowed with any corn after the ſaid corn in the ſaid field called *L.* whereof, *&c.* was mowed and carried away, until the ſaid field or any part thereof was re-ſowed with corn, and in every third year when the ſaid field called *L.* whereof, *&c.* lay freſh and fallow then for the whole year; *Whereby* the ſaid *B.* on the firſt day of *Auguſt* in the 20th year of the reign of our Lord the preſent king, which was the third year in which the ſaid field called *L.* lay freſh and fallow, put his ſaid gelding and mare which were the proper cattle of the ſaid *B.* and levant and couchant, within the ſaid borough of *D.* into the ſaid field called *L.* whereof, *&c.* to eat the graſs growing in the ſame, in uſing his ſaid common, and with his feet in walking for that cauſe, and with his ſaid gelding and mare eat up, trod down and conſumed the ſaid graſs then growing in the ſaid cloſe in which, *&c.* as it was lawful for him to do, which are the ſame reſidue of the ſaid treſpaſs whereof the ſaid *H.* above complaineth againſt him;

Without

Without this, that he the ſaid *B.* is guilty of any treſpaſs in the ſaid place in which, *&c.* with the ſaid gelding and mare, at any time after the ſaid field or any part thereof was in any year ſowed with corn, and before the corn in the ſame year in the ſaid field called *L.* was mowed and carried away; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *H.* ought to have his ſaid action againſt him, *&c.*

Plea in aſſault by two defendants, as to part not guilty.

And the ſaid *A. W.* and *G. W.* by *T. H.* their attorney come and defend the force and injury when, *&c.* And as to the coming with force and arms, and all the treſpaſs aforeſaid, except the aſſaulting, beating and wounding the ſaid *J.* by them ſuppoſed to be committed, they ſay that they are in no wiſe guilty thereof; And of this they put themſelves upon the country: *And* the ſaid *J. H.* likewiſe, *&c.* *And* as to the aſſaulting, beating and wounding the ſaid *J.* above ſuppoſed to be committed by the ſaid *A.* ſhe the ſaid *A.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action againſt her for the ſame, becauſe ſhe ſaith that the ſaid *J.* upon the ſame day and year in the ſaid declaration above mentioned, at *B.* aforeſaid, with force and arms made an aſſault upon her the ſaid *A.* and would then and there have beat, wounded and evil-treated her, for which cauſe ſhe the ſaid *A.* then and there defended herſelf againſt the ſaid *J.* And the ſaid *A.* ſaith, if any damage or ill then and there befel the ſaid *J.* the ſame was from the proper aſſault of the ſaid *J.*

Iſſue.

As to the reſidue, one defendant pleads Son aſſault demeſne.

The other a ſpecial Son aſſault, *viz. The two defendants were ſiſters, the plaintiff and*

the first defendant were fighting, the second defendant to preserve the peace, and in defending her sister, molliter manus imposuit; *whereupon plaintiff assaulted her,* et sic, *&c.*

upon the said *A.* and in defence of the said *A.* And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her for the same. *And* the said *G.* as to the assaulting, beating and wounding of the said *J.* above supposed to be committed by her, the said *G.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she saith, that at the said time when the said trespass is above supposed to have been committed by the said *G.* they the said *A.* being the sister of the said *G.* and the said *J.* with force and arms, *&c.* were fighting together, and would have beat, wounded and evil treated each other at *B.* aforesaid; whereupon the said *G.* for preservation of the peace of his said majesty, and to prevent the said *A.* and *J.* from doing bodily hurt to each other, and in defence of her said sister, then and there interposed between them, and gently laid her hands on the said *J.* to part them the said *A.* and *J.* from further fighting one with the other, and to prevent the said *J.* from doing bodily hurt to her said sister *A.* Upon which the said *J.* then and there with force and arms made an assault upon her the said *G.* and then and there would have beat, wounded and evil treated her; whereupon the said *G.* then and there defended herself against the said *J.* And the said *G.* saith, that if any damage or ill then and there befel the said *J.* the same was from the cause aforesaid, and from the

aſſault of the ſaid *J.* upon her the ſaid *G.* and in defence of the ſaid *G.* as aforeſaid; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if the ſaid *J.* ought to have or maintain his ſaid action againſt her for the ſame.

Replication to the plea of the firſt defendant, de injuria ſua propria.

And the ſaid *J.* as to the plea of the aforeſaid *A.* as to the aforeſaid aſſaulting, beating and wounding of him the ſaid *J.* by her the ſaid *A.* ſaith, that by reaſon of any thing by the ſaid *A.* in her plea aforeſaid alledged, he ought not to be barred from having his action aforeſaid againſt her for the ſame, becauſe he ſaith that ſhe the ſaid *A.* of her own wrong, and without the cauſe by her in her plea aforeſaid alledged, the day and year aforeſaid, at *B.* aforeſaid, did aſſault, beat and wound him the ſaid *J.* in manner and form as the ſaid *J.* above complaineth againſt her; And this he prayeth may be inquired of by the country: *And* the ſaid *A.* likewiſe, *&c.* *And* the ſaid *J.* as to the plea aforeſaid of her the ſaid *G.* as to the ſaid aſſaulting, beating and wounding of him the ſaid *J.* by her the ſaid *G.* ſaith, that by reaſon of any thing by her the ſaid *G.* in her plea aforeſaid alledged, he ought not to be barred from having his ſaid action againſt her for the ſame, becauſe he ſaith that ſhe the ſaid *G.* of her own wrong, and without the cauſe by her in her plea aforeſaid alledged, to wit, the day and year aforeſaid, at *B.* aforeſaid, did aſſault, beat and wound the ſaid *J.* in manner and form as he the ſaid *J.* above complaineth againſt

Iſſue.

To the plea of the ſecond defendant, de injuria ſua propria.

her; And this he likewiſe prayeth may be inquired of by the country; *And* the ſaid *G.* likewiſe, *&c. Therefore*, as well to try that iſſue, as the ſeveral other iſſues above joined between the ſaid parties, the ſheriff, *&c.*

Iſſue and Venire *awarded.*

Aſſault.

And the ſaid *N.* and *J.* by *H. B.* their attorney come and defend the force and injury when, *&c.* *And* the ſaid *J.* ſaith he is in no wiſe guilty of the treſpaſs aforeſaid, as the ſaid *J.* above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *J.* doth the like.

Plea, not guilty by one defendant.

Iſſue.

Not guilty, as to part, by the other defendant.

And the ſaid *N.* as to the coming with force and arms, and as to the wounding of the ſaid *J.* and the tearing of her clothes aforeſaid above ſuppoſed to be committed, ſaith, that he is in no wiſe guilty thereof, as the ſaid *J.* above complaineth thereof againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *J.* doth the like.

Iſſue

As to the reſidue, plaintiff entered into the defendant's dwelling-houſe and diſturbed him in the poſſeſſion of it, and defendant molliter manus impoſuit.

And as to the reſidue of the treſpaſs aforeſaid above ſuppoſed to be committed, the ſaid *N.* ſaith that the ſaid *J.* ought not to have her aforeſaid action againſt him, becauſe he ſaith, that at the aforeſaid time when it is ſuppoſed the aforeſaid treſpaſs was committed, he was lawfully poſſeſſed of a certain meſſuage, being his dwelling-houſe in *P.* in the county aforeſaid; and he the ſaid *N.* being ſo poſſeſſed of the ſaid meſſuage aforeſaid, the ſaid *J.* without the leave of him the ſaid *N.* did enter into the aforeſaid houſe, and did tarry there and greatly diſturb him in the poſſeſſion thereof; whereupon

upon the ſaid *N.* then and there requeſted the ſaid *J.* to depart out of the aforeſaid houſe of him the ſaid *N.* which ſhe then and there wholly refuſed to do; wherefore the ſaid *N.* to cauſe the ſaid *J.* to depart from thence, did gently lay his hands upon the ſaid *J.* in the ſaid houſe, to put her out of the ſaid houſe, and did put her out of the houſe aforeſaid, which are the aforeſaid reſidue of the treſpaſs aforeſaid whereof the ſaid *J.* above complaineth; *Without this*, that the ſaid *N.* is guilty of the aforeſaid reſidue of the treſpaſs aforeſaid, at *B.* aforeſaid, or elſewhere than at *P.* aforeſaid; And this the ſaid *N.* is ready to verify: Wherefore he prayeth judgment, if the ſaid *J.* ought to have her aforeſaid action againſt him for the ſame. *Traverſe the place.*

Replication, *de injuria ſua propria.*

And the ſaid *A.* by *S. F.* his attorney cometh and defendeth the force and injury when, *&c. And* as to the coming with force and arms, and all the ſaid ſeveral treſpaſſes ſuppoſed to be done, except the ſaid aſſault, impriſoning, and detaining and keeping in priſon of the ſaid *C.* for the time in the declaration aforeſaid firſt above mentioned, ſuppoſed to be done, he ſaith that he is not guilty thereof, as the ſaid *C.* above complaineth againſt him; And of this he putteth himſelf upon the country, *&c. And* the ſaid *C.* doth the like, *&c. And* as to the ſaid aſſault, evilly treating, impriſoning, and detaining and keeping in priſon of the ſaid *C.* in the declaration aforeſaid firſt above mentioned *Plea in aſſault and impriſonment.* *As to part, not guilty.* *Iſſue.* *As to the reſidue,*

mentioned ſuppoſed to be done, the ſaid *A.* ſaith that the ſaid *C.* ought not to have his action aforeſaid againſt him for the ſame becauſe he ſaith, that long before the time aforeſaid in which, *&c.* and at the ſame time in which, *&c.* and continually afterwards hitherto, he the ſaid *A.* was and is keeper of the common gaol of our ſovereign lord the king of his county of *Y.* aforeſaid, at the caſtle of *Y.* aforeſaid in the ſaid county; And that long before the ſaid time in which, *&c.* to wit, in the term of St. *Hilary* in the 11th year of the reign of the lord the now king, a certain writ of *Ca. ad reſpon.* directed to the then ſheriff of the county of *Y.* aforeſaid, did iſſue out of the court of our ſaid lord the king of the bench then being at *W.* in the county of *M.* by which ſaid writ our ſaid ſovereign lord the king commanded the ſaid then ſheriff that he ſhould take the ſaid *C. D.* and him ſafely keep, ſo that he might have his body before the juſtices of our ſaid lord the king at *W.* aforeſaid, from the day of *Eaſter* in fifteen days to anſwer *E. F.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe, upon promiſe, to the damage of the ſaid *E.* 30*l.* Which ſaid writ afterwards, and before the return thereof, to wit, on the 12th day of *March* in the year laſt above mentioned, at the caſtle of *Y.* aforeſaid, was delivered to *G. H.* Eſq; then ſheriff of *Y.* in due form of law to be executed. By virtue of which ſaid writ the ſaid *G. H.* then being ſheriff of the ſaid county,

Defendant is keeper of the county gaol of York.

Ca. ad reſpondendum *iſſued againſt plaintiff.*

Writ delivered to the ſheriff.

Plaintiff arreſted thereon.

county, afterwards, and before the return of the ſaid writ, that is to ſay, the ſaid 12th day of *March* in the ſaid year laſt above mentioned, at the caſtle of *Y.* aforeſaid, the ſaid *C. D.* in due form of law arreſted and took into his cuſtody; And the ſaid *C. D.* being then in cuſtody of the ſaid ſheriff upon the arreſt aforeſaid, he the ſaid *G. H.* being then ſheriff of the county aforeſaid, afterwards and before the return of the ſaid writ, to wit, the ſaid 12th day of *March* in the year laſt above mentioned, at the caſtle of *Y.* aforeſaid, by his certain warrant under the ſeal of his office of ſheriff of the county of *Y.* aforeſaid ſealed, and to the ſaid *A.* then keeper of the gaol aforeſaid directed, commanded that he the ſaid *A.* ſhould take into his cuſtody the body of the ſaid *C. D.* and him ſafely keep, ſo that the ſaid ſheriff might have his body before the ſaid juſtices of our ſaid lord the king at *W.* from the ſaid day of *Eaſter* in fifteen days to anſwer the ſaid *F.* of the ſaid plea of treſpaſs on the caſe, upon promiſe, to the damage of the ſaid *E.* 30*l.* By virtue of which ſaid warrant the ſaid *A.* afterwards and before the return of the ſaid writ, to wit, the ſame 12th day of *March* aforeſaid, in the year laſt above-mentioned, the ſaid *A.* being then keeper of the ſaid gaol, the ſaid gaol being then at the caſtle of *Y.* aforeſaid, did gently lay his hands upon the ſaid *C.* to take him into his cuſtody in the gaol aforeſaid for the cauſe aforeſaid, and him the ſaid *C.* then and there for the cauſe aforeſaid did take into his

Plaintiff committed to the cuſtody of defendant.

his cuſtody in the gaol aforeſaid, by virtue of the ſaid warrant, and according to the duty of his ſaid office did detain for the time in the declaration aforeſaid mentioned, that is to ſay, until ſuch time as he the ſaid *C.* by due courſe of law was out of the cuſtody of him the ſaid *A.* as gaoler as aforeſaid delivered, as it was lawful for him to do, which are the aſſault, evil treating, impriſoning, and detaining and keeping in priſon of the ſaid *C.* by the time aforeſaid in the ſaid declaration firſt above-mentioned ſuppoſed to be done, whereof the ſaid *C.* above complaineth againſt him; *Without this*, that the ſaid *A.* is guilty of the ſaid treſpaſs, aſſault, impriſoning, and detaining and keeping in priſon of the ſaid *C.* at any time before the taking and receiving of the ſaid *C.* into the gaol aforeſaid, for the cauſe aforeſaid, or at any time after his ſaid diſcharge out of the ſaid gaol as aforeſaid; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *C.* ought to have or maintain his action aforeſaid againſt him, *&c.*

Traverſe.

Replication, defendant is guilty after plaintiff was diſcharged.

And the ſaid *C.* as to the ſaid plea of the ſaid *A.* above pleaded in bar, as to the ſaid aſſault, evil treating, impriſoning, and detaining and keeping in priſon of the ſaid *C.* above done, ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action for the ſame againſt him, becauſe he ſaith that he the ſaid *A.* is guilty of the ſaid treſpaſs, aſſault, impriſoning, and detaining and keeping in priſon of the ſaid *C.* after his ſaid diſcharge out of the

ſaid gaol in the ſaid plea mentioned in manner and form as the ſaid *C.* hath above declared againſt him; And this he prayeth may be inquired of by the country: *And* the ſaid *A.* doth the like. *Therefore*, &c. *Iſſue.*

And the ſaid *T. R.* by *J. G.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T. G.* ought not to have his ſaid action againſt him, becauſe he ſaith that the ſaid *T. G.* at the reſpective times of ſpeaking of the ſaid reſpective words ſo ſpoken by the ſaid *T. R.* of the ſaid *T. G.* as aforeſaid, was a ſodomite and a buggerer, to wit, at *S.* aforeſaid; and therefore he the ſaid *T. R.* ſpoke of the ſaid *T. G.* the ſaid ſeveral words above mentioned, as it was lawful for him; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T. G.* ought to have his ſaid action againſt him, *&c.* *Plea in caſe for words juſtifies the words.*

And the ſaid *T. G.* ſaith, that he by any thing by the ſaid *T. R.* in pleading above alledged ought not to be precluded from having his action aforeſaid againſt him, becauſe he ſaith that the ſaid *T. R.* of his own wrong, without ſuch cauſe by the ſaid *T. R.* above in pleading alledged, on the ſaid 1ſt day of *May* in the year of our Lord 1736. at *S.* aforeſaid, did ſay, affirm, declare and publiſh, of and concerning the ſaid *T. G.* the ſaid words in the ſaid declaration firſt above ſpecified, that is to ſay, You, *&c.* as in the declaration] and alſo afterwards, to wit, on the ſame day and year at *S.* aforeſaid, *Replication, de injuria ſua propria.*

ſaid, the ſaid *T. R.* with a loud voice did ſpeak, rehearſe, proclaim, publiſh and declare of the ſaid *T. G.* the other words in the ſaid declaration laſt above ſpecified, that is to ſay, You, *&c.* [as in the declaration] in manner and form as the ſaid *T. G.* hath thereof above declared; And this he prayeth may be inquired of by the country: *And* the ſaid *T. R.* likewiſe. *Therefore*, &c.

Plea of bankruptcy.

AND the ſaid *Robert H.* by *John F.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith that the ſaid *Gabriel G.* ought not to have his ſaid action againſt him, becauſe for a general plea in this behalf, according to the form of the ſtatute in ſuch caſe made and provided, he ſaith that he the ſaid *Robert* after the firſt day of *June* in the year of our Lord one thouſand ſeven hundred and fifty-two, and before the exhibiting the ſaid bill of the ſaid *Gabriel* (to wit) on the thirteenth day of *June* in the year of our Lord one thouſand ſeven hundred and fifty-two aforeſaid, became a bankrupt within the intent and meaning of the ſeveral ſtatutes made and in force concerning bankrupts, (to wit) at *London* aforeſaid in the pariſh and ward aforeſaid, and that the ſeveral cauſes of action aforeſaid, and each and every of them did accrue before the time, that he the ſaid *Robert* became a bankrupt as aforeſaid; And of this he putteth himſelf upon the county: And the ſaid *Gabriel* doth likewiſe the ſame. *Therefore*, &c.

Iſſue.

Hil.

Hil. 21 *Geo.* 2. *C. B.*

AND the ſaid *F. C.* by *G. B.* his attorney cometh and defendeth the force and injury when, &c. *And as to* the ſecond and third promiſes and undertakings in the ſaid declaration ſpecified and above ſuppoſed to be made, the ſaid *Francis* ſaith, that he did not undertake and promiſe in manner and form as the ſaid *W. J.* thereupon above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *W.* doth the like. *And as to* the firſt promiſe and undertaking in the declaration above ſpecified and ſuppoſed to be made, the ſaid *Francis* ſaith, that the ſaid *W.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that after the 5th day of *September* in the year of our Lord 1714. to wit, on the ſaid 5th day of *March* in the year of our Lord 1744. at *London* aforeſaid, in the pariſh and ward aforeſaid, it was corruptly agreed between the ſaid *F.* and the ſaid *C. N.* in the ſaid declaration named, that the ſaid *C.* ſhould lend to the ſaid *F.* the ſum of 10*l.* 10*s.* and ſhould give day of payment thereof for the ſpace of one month then next enſuing, to wit, until the fifth day of *April* in the year of our Lord 1745. And that the ſaid *F.* for the loan of the ſaid 10*l.* 10*s.* and for giving day of payment thereof for the time aforeſaid, ſhould give and pay to the ſaid *C.* the ſum of 5*s.* upon the ſaid 5th day of *April* in

Plea non aſſumpſit *to the ſecond and third promiſes.*

Iſſue.

The ſtatute of uſury to the firſt promiſe being on a promiſſory note indorſed.

in the year laſt mentioned for the intereſt and gain thereof, and for giving day of payment of the ſaid 10*l.* 10*s.* which ſaid ſum of 5*s.* exceeds the rate of 5*l.* for the intereſt of 100*l.* for one year, againſt the form of the ſtatute in ſuch caſe lately made and provided; And afterwards, to wit, on the ſaid 5th day of *March* in the ſaid year of our Lord 1744. at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *C.* in purſuance of the ſaid corrupt agreement, did advance and lend to the ſaid *F.* the ſaid ſum of 10*l.* 10*s.* And the ſaid *F.* on that occaſion did ſign and deliver to the ſaid *C.* the ſaid promiſſory note in the ſaid declaration mentioned; And the ſaid *F.* then and there paid the ſaid ſum of 5*s.* for the loan and intereſt of the ſaid 10*l.* 10*s.* and for giving time for payment thereof for one month, to wit, until the ſaid 5th day of *April* in the ſaid year of our Lord 1745. in purſuance of and according to the form and effect of the ſaid corrupt agreement, by means whereof the ſaid promiſſory note in the ſaid declaration above mentioned, by virtue of the ſtatute in that caſe made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *W.* ought therefore to have his ſaid action thereon againſt him, *&c.* *R. Draper.*

Stat. 12 Ann. c. 16.

Cooke

Cooke.

Trin. 24 & 25 *Geo.* 2.

AND the ſaid *J. B.* in his proper perſon cometh and defendeth the wrong and injury when, &c. And as to 36*l.* 2*s.* 11*d.* parcel of the ſaid 50*l.* in the ſaid promiſe and undertaking in the ſaid declaration firſt mentioned and ſuppoſed to be made; And alſo as to the promiſes and undertakings in the ſaid declaration, ſecondly, thirdly, and laſtly, above mentioned and ſuppoſed to be made, ſaith, that he did not undertake and promiſe in manner and form as the ſaid *Mary* above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *Mary* doth likewiſe the ſame. *And* the ſaid *John* as to 13*l.* 17*s.* 1*d.* reſidue of the ſaid 50*l.* in the ſaid promiſe and undertaking in the ſaid declaration firſt mentioned and ſuppoſed to be made ſaith, that the ſaid *Mary* ought not to recover any damages by reaſon of the nonpayment of the ſaid 13*l.* 17*s.* 1*d.* reſidue of the ſaid 50*l.* in the ſaid promiſe and undertaking in the ſaid declaration firſt mentioned, becauſe he ſaith, that he the ſaid *John* after the making of the ſaid firſt promiſe and undertaking as to the ſaid 13*l.* 17*s.* 1*d.* reſidue, &c. and before the day of exhibiting of the bill of the ſaid *M.* againſt him the ſaid *J.* to wit, on the ſaid 30th day of *May* in the ſaid year of our Lord 1751. at the pariſh of *St. Clement Danes* aforeſaid in the ſaid county

Plea as to part, non aſſumpſit.

Iſſue.

As to reſidue a tender.

county of *Middleſex*, tendered and offered to pay to the ſaid *M.* the ſaid 13*l.* 17*s.* 1*d.* reſidue, *&c.* which ſaid 13*l.* 17*s.* 1*d.* ſhe the ſaid *M.* then and there refuſed to accept or receive from the ſaid *J.* And the ſaid *J.* further ſaith, that he the ſaid *J.* always from the time of making the ſaid firſt promiſe and undertaking as to the ſaid 13*l.* 17*s.* 1*d.* reſidue, *&c.* hath hitherto been ready and ſtill is ready to pay to the ſaid *M.* the ſaid 13*l.* 17*s.* 1*d.* and he bringeth the ſame here into court ready to be paid to the ſaid *M.* if ſhe will accept the ſame; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *Mary* ought to recover any damages by reaſon of the non-payment of the ſaid 13*l.* 17*s.* 1*d.* reſidue, *&c.* thereof againſt him. *D. Poole.*

Notice of ſet off.

Mr. *B.* take notice that the defendant *J. B.* at the trial of the general iſſue herein above pleaded, will inſiſt and give in evidence that the plaintiff *M. K.* before and at the time of exhibiting her bill againſt the ſaid *J. B.* was and ſtill is indebted to the ſaid *J. B.* in the ſum of 50 *l.* of lawful money of *Great Britain*, for work, labour, care and attendances by the ſaid *J. B.* in and about the proſecuting, defending and ſoliciting of divers cauſes, ſuits and buſineſſes in the law for the ſaid *Mary* at her ſpecial inſtance and requeſt, done, taken and performed, and for money paid, laid out and expended by the ſaid *J.* for the ſaid *M.* in and about the proſecuting, defending and ſoliciting

liciting of thoſe cauſes, ſuits and buſineſſes, at her like inſtance and requeſt, and for fees due and of right payable to the ſaid *J.* in that reſpect; And alſo in the further ſum of 50 *l.* of like lawful money, for money by the ſaid *J.* paid, laid out and expended for the ſaid *M.* at her like inſtance and requeſt; and for money by the ſaid *Mary* had and received, to and for the uſe of the ſaid *J.* Which ſaid ſeveral ſums ſo due and owing to the ſaid *J.* from the ſaid *M.* as aforeſaid, the ſaid *J.* doth intend to inſiſt, at the trial of the general iſſue above pleaded, that the ſame or ſo much thereof as ſhall be ſufficient may be ſet off againſt ſo much money as ſhall appear to be due to the ſaid *M.* upon the ſaid ſeveral demands of the ſaid *Mary* contained in the ſaid declaration, to which the ſaid *J.* hath pleaded the general iſſue, according to the ſtatute in ſuch caſe made and provided, dated this 21ſt day of *May* in the year of our Lord 1751.

To Mr. *J. B.* attorney for the plaintiff.

Yours, *&c. J. B.* the defendant.

Plea, a releaſe.

And the ſaid *Arundel Roberts* by *Thomas Holland* his attorney, cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *Benjamin Lane* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after the making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned above ſuppoſed to be made, and before the day of ex-

hibiting the ſaid bill of the ſaid *B.* againſt him, to wit, on the 10th day of *May* in the 13th year of the reign of the Lord the now King, at the pariſh aforeſaid in the ſaid county, the ſaid *B.* by his certain writing of releaſe indented, ſealed with the ſeal of the ſaid *B.* and now ſhewn here to the court of our ſaid Lord the King, bearing date the ſame day and year, did remiſe, releaſe, and for ever quit-claim unto the ſaid *A. R.* his heirs, executors and adminiſtrators, all and all manner of actions, cauſe and cauſes of actions, ſuits, bills, bonds, obligations, debts, dues, duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, which againſt him the ſaid *A.* he the ſaid *B.* his heirs, executors or adminiſtrators, ſhould or might have, claim, challenge or demand, for or by reaſon or means of any matter, cauſe or thing whatſoever, from the beginning of the world, to the day of the date of the ſaid writing of releaſe, as by the ſaid writing of releaſe, amongſt other things, more fully appeareth: And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *Benjamin* ought to have or maintain his ſaid action againſt him, *&c.*

Profert.

W. Hayward.

Replication. And the ſaid *B.* ſaith, that he ought not by any thing by the ſaid *A.* above in pleading alledged, to be barred from having or maintaining his ſaid action in this behalf againſt

againſt him, becauſe he ſaith, that he the ſaid *B.* did not, after the making the ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, make ſuch indenture of releaſe as the ſaid *A.* hath above in pleading alledged; And this he prayeth may be inquired of by the country: And the ſaid *A.* doth ſo likewiſe. *Ford.*

Hil. 16 *Geo.* 2.

AND the ſaid *William Hammond* by *Nathaniel Trayten* his attorney, cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *Ann Davies* ought not to have or maintain her ſaid action thereof againſt him, becauſe he ſaith, that after the making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned above ſuppoſed to be made, and before the exhibiting the ſaid bill of the ſaid *Ann*, to wit, on the 15th day of *April* in the 15th year of the reign of the Lord the now King at *Ludlow* aforeſaid in the ſaid county, the ſaid *Ann* by her certain writing of releaſe, ſealed with the ſeal of the ſaid *Ann*, and then and there made and duly executed by her; which ſaid writing of releaſe the ſaid *William* bringeth here into court, the date whereof is the day and year laſt mentioned, for herſelf, her heirs, executors and adminiſtrators, did remiſe, releaſe, and for ever quit-claim, unto the ſaid *William*, his heirs, executors and adminiſtrators, all and all manner of action and actions, cauſe and cauſes of

Bar, a general releaſe in caſe ſur aſſumpſit.

Profert.

actions, ſuits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, both at law and in equity, or otherwiſe howſoever, which againſt the ſaid *William* ſhe ever had, then had, or which ſhe the ſaid *Ann*, her heirs, executors or adminiſtrators, could, ſhould, or might have, claim, challenge or demand, for or by reaſon or means of any act, matter, cauſe or thing, from the beginning of the word, to the day of the date of the ſaid writing of releaſe; as by the ſaid writing of releaſe, amongſt other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *Ann* ought to have or maintain her ſaid action thereof againſt him, *&c.* *D. P.*

Replication, dureſs of imprisonment.

And the ſaid *Ann* ſaith, that ſhe by any thing above alledged by the ſaid *William* in pleading, ought not to be barred from having her action aforeſaid againſt him the ſaid *William*, becauſe ſhe ſaith, that ſhe the ſaid *Ann* at the time of making the writing aforeſaid, was impriſoned by him the ſaid *William*, to wit, at *Ludlow* aforeſaid in the ſaid county, and was there detained in priſon until ſhe the ſaid *Ann*, by force and dureſs of that impriſonment, then and there made the ſaid writing to the ſaid *William*; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, and her damages by reaſon

reaſon of the premiſſes to be adjudged to her, *&c.* *F. R.*

And the ſaid *William* proteſting that the ſaid *Ann*, at the time of making of the writing aforeſaid, was not impriſoned as the ſaid *Ann* hath in and by her ſaid replication above ſuppoſed, for rejoinder the ſaid *William* ſaith that the ſaid writing was not made by force and dureſs of impriſonment, as the ſaid *Ann* hath in her ſaid declaration above alledged: And hereupon he putteth himſelf upon the country, *&c.* Verdict *pro Q.* *Rejoinder.*

Caſe.

London, to wit, *W. C.* complaineth of *J. G.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf; *For that whereas* the ſaid *W.* on the 30th day of *December* in the year of our Lord 1741. at *London* aforeſaid, at the pariſh of *St. Mary le Bow* in the ward of *Cheap*, according to the uſage and cuſtom of merchants cauſed to be made a certain writing of aſſurance, commonly called a policy of inſurance, by which ſaid writing the ſaid *W.* by the name of Mr. *W. C.* as well in his own name as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might or ſhould appertain, in part or in all, did make aſſurance, and cauſe himſelf and them, and every of them, to be inſured, *Declaration in caſe* Sur aſſumpſit, *upon a policy of inſurance.* B. R. *Policy of aſſurance.*

ſured, loſt or not loſt, at and from *Rotterdam* to *Gottenburg*, and at and from *Gottenburg* to *Belfaſt*, upon any kind of goods and merchandize; and alſo upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ſhip or veſſel called *The William and James*, whereof was maſter under God for the preſent voyage captain *G. A.* or whoſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatſoever other name or names the ſame ſhip or the maſter thereof was or ſhould be named or called, beginning the adventure upon the ſaid goods and merchandizes from the loading thereof aboard the ſhip at *Rotterdam* upon the ſaid ſhip, *&c.* from and immediately following her firſt arrival at *Rotterdam*, and ſo ſhould continue and endure during her abode there, upon the ſaid ſhip, *&c.* and further until the ſaid ſhip with all her ordnance, tackle, apparel, *&c.* and goods and merchandizes whatſoever, ſhould be arrived at *Belfaſt* upon the ſhip, *&c.* until ſhe had moored at anchor 24 hours in good ſafety, and upon the goods and merchandizes, until the ſame ſhould be there diſcharged and ſafely landed; And it ſhould be lawful for the ſaid ſhip, *&c.* in that voyage to proceed and ſail to, and touch and ſtay at any ports or places whatſoever, without prejudice to that inſurance; the ſaid ſhip, *&c.* goods and merchandizes, *&c.* for ſo much as concerned the aſſureds, by agreement between the aſſureds and the aſſurers in that policy, were and ſhould be valued at on ſhip and goods, both

or

or either, as intereſt ſhould appear, without further account to be given by the aſſureds for the ſame; touching the adventures and perils which they the aſſurers were contented to bear and did take upon them in that voyage, they were of the ſeas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, ſurprizals, takings at ſea, arreſts, reſtraints and detainments of all kings, princes and people, of what nation, condition or quality ſoever, barretry of the maſter and mariners, and of all other perils, loſſes and misfortunes that had or ſhould come to the hurt, detriment or damage of the ſaid goods, merchandizes and ſhip, *&c.* or any part thereof; and in caſe of any loſs or misfortune, it ſhould be lawful for the aſſureds, their factors, ſervants and aſſigns, to ſue, labour and travel for, in and about the defence, ſafeguard and recovery of the ſaid goods, merchandizes, ſhip, *&c.* or any part thereof, without prejudice to that inſurance, to the charges whereof they the aſſurers would contribute each one according to the rate and quantity of his ſum therein aſſured: And it was agreed by them the inſurers, that that writing or policy of aſſurance ſhould be of as much force and effect as the ſureſt writing or policy of aſſurance theretofore made in *Lombard-ſtreet* or in the *Royal Exchange*, or elſewhere in *London*; and ſo they the aſſurers were contented and did thereby promiſe and bind themſelves, each one for his own part, their heirs, executors and goods, to the aſ-

ſureds, their executors, adminiſtrators and aſſigns, for the true performance of the premiſſes, confeſſing themſelves paid the conſideration due unto them for that aſſurance by the aſſureds ——— at and after the rate of —— *per cent.* and in caſe of loſs (which God forbid) the aſſureds to abate 2 *l. per cent.*

Subſcribed by aſſurers. *In witneſs* whereof they the aſſurers ſubſcribed their names and ſums aſſured in *London*, the 30th day of ——— in the year of

Aſſumpſit. our Lord 1741. *And* thereupon the ſaid *J. G.* afterwards, to wit, on the ſaid 30th day of *December* in the year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, in conſideration that the ſaid *W. C.* had then and there, at the ſpecial inſtance and requeſt of the ſaid *J. G.* paid to the ſaid *J. G.* the ſum of 4 *l.* 19 *s.* and 8 *d.* of lawful money of *Great Britain*, for the aſſurance of 73 *l.* upon the premiſſes in the ſaid writing or policy of aſſurance mentioned, according to the tenor thereof, and had undertaken, and then and there faithfully promiſed to the ſaid *J. G.* to perform and fulfil all and ſingular the aforeſaid premiſſes contained in the ſaid writing or policy of aſſurance mentioned on the part and behalf of the aſſured to be performed, then and there undertook, and to the ſaid *W. C.* then and there faithfully promiſed that he the ſaid *J. G.* would become an inſurer to the ſaid *W. C.* as to 73 *l.* according to the tenor and true intent of the ſaid writing or policy of aſſurance; and that he the ſaid *J. G.* would well and faithfully perform and fulfil all and ſingular

the

the matters and things in the ſaid writing or policy of aſſurance contained on the part and behalf of him the ſaid *J. G.* as ſuch an inſurer, to be performed and fulfilled to the ſaid *W. C.* as to the ſaid 73*l.* And the ſaid *J. G.* did then and there ſubſcribe the ſaid writing or policy of aſſurance as an inſurer for the aforeſaid ſum of 73*l.* *And* the ſaid *W. C.* in fact ſays, that after the firſt arrival of the ſaid ſhip at *Rotterdam* aforeſaid, that is to ſay, on the 1ſt day of *January* in the ſaid year of our Lord 1741. aforeſaid, at *Rotterdam* aforeſaid, being in parts beyond the ſeas, divers goods and merchandizes to the value of 40*l.* and upwards were ſhipped and loaded on board the aforeſaid ſhip, and until and at the time of the loſs of the ſaid ſhip herein after mentioned were and remained aboard the ſame ſhip. *And* the ſaid *W. C.* doth further aver, that the aſſurance aforeſaid ſo made by the ſaid *W. C.* and in his name, as touching the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the ſaid ſhip, was made in truſt, and for the uſe and benefit of one *J. C.* and that the intereſt of the ſaid *J. C.* which he had in the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the ſaid ſhip, at the time of making the ſaid writing of aſſurance and promiſe amounted to the value of 35*l.* of lawful money of this realm, and upwards, to wit, at *L.* aforeſaid, in the pariſh and ward aforeſaid; and that the aſſurance aforeſaid ſo made by the ſaid

Aſſurance made in truſt.

ſaid *W. C.* and in his name, as touching the ſaid goods and merchandize as aforeſaid, was made in truſt and for the uſe and benefit of one *T. G.* and that the intereſt of the ſaid *T. G.* which he had in the ſaid goods and merchandize ſo ſhipped and loaded on board the ſaid ſhip as aforeſaid, at the time that the ſame were ſo ſhipped and loaded on board as aforeſaid, amounted to the value of 38*l.* of lawful money of this realm, and upwards, that is to ſay, at *L.* aforeſaid in the pariſh and ward aforeſaid. *And* the ſaid *W. C.* further in fact ſays, that the ſaid ſhip, with the ſaid goods and merchandizes ſo loaden on board her, afterwards, that is to ſay, on the ſaid 1ſt day of *January* in the ſaid year of our Lord 1741. according to the intention of the ſaid writing of aſſurance, ſet ſail and departed from *Rotterdam* aforeſaid in parts beyond the ſeas, in her voyage aforeſaid towards *Gottenburg* aforeſaid; and afterwards, to wit, on the 8th day of *January* in the year aforeſaid, the ſaid ſhip, with the ſaid goods and merchandizes loaden on board her, and with all the tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the ſame ſhip ſailing and proceeding in the ſaid voyage towards *Gottenburg* aforeſaid, and before her arrival there, by tempeſts and perils of the ſea, to wit, violent winds, ſtorms, and a rough ſea, was ſhipwrecked and loſt in the ſea, by which the ſaid ſhip, goods and merchandizes, and all other things in the ſame and thereunto belonging, were totally deſtroyed,

Ship ſailed.

Ship wrecked.

ſtroyed, periſhed and loſt there, and became of no value to the owners thereof, to wit, at *L.* aforeſaid, in the pariſh and ward aforeſaid; of which premiſſes the ſaid *J. G.* afterwards, that is to ſay, on the 1ſt day of *May* in the year of our Lord 1743. there had notice, and was then and there requeſted by the ſaid *W. C.* to pay him 71 *l.* 10 *s.* and 9 *d.* ½, parcel of the ſaid 73 *l.* as aſſured as aforeſaid, deducting 1 *l.* 9 *s.* 2 *d.* ½, reſidue of the ſaid 73 *l.* in reſpect of the loſs aforeſaid, which ſaid 71 *l.* 10 *s.* and 9 *d.* ½, the ſaid *J. G.* ought to have paid to the ſaid *W. C.* according to the form and effect of the ſaid policy of aſſurance. *And whereas* alſo the ſaid *J. G.* afterwards, that is to ſay, on the ſame day and year laſt mentioned, at *L.* aforeſaid, at the pariſh and ward aforeſaid, was indebted to the ſaid *W. C.* in the further ſum of 10 *l.* of lawful money of *G. B.* for ſo much money by the ſaid *J. G.* before that time had and received to the uſe of the ſaid *W. C.* And being ſo indebted, he the ſaid *J. G.* in conſideration thereof afterwards, that is to ſay, on the ſame day and year laſt mentioned, at *L.* aforeſaid, at the pariſh and ward aforeſaid, undertook, and to the ſaid *W. C.* then and there faithfully promiſed to pay to him the ſaid laſt mentioned ſum of money. *Nevertheleſs* the ſaid *J. G.* not regarding his ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. C.* in this behalf, hath not paid to him

Notice.

Indeb. aſſ. *for money had and received.*

Breach.

him the ſaid ſeveral ſums of money, or either of them, or any part thereof; although to pay the ſame to him the ſaid *W. C.* he the ſaid *J. G.* afterwards, that is to ſay, on the ſame day and year laſt mentioned, at *L.* aforeſaid, at the pariſh and ward aforeſaid, was requeſted by the ſaid *W. C.* But the ſaid *J. G.* to pay the ſame to him hath hitherto refuſed, and doth yet refuſe, to the damage of the ſaid *W. C.* 100 *l.* And thereof he bringeth ſuit, *&c.*

B. C. *for plaintiff,* } *Pledges to* { J. D.
and } { *and*
—— *for defendant,* } *proſecute* { R. R.

Declaration in caſe Sur aſſ. *on a foreign bill of exchange, by the indorſee againſt the drawee.* B. R. Lil. Ent. 90. *Bill drawn.*

Middleſex, to wit, *J. D. B.* complaineth of *A. H.* in the cuſtody of the marſhal of the *Marſhalſea* of our Lord the king, before the king himſelf, for this, That *whereas* one *R. T.* upon the 25th day of *December* in the year of our Lord 1735. reſiding and merchandizing at *C.* in parts beyond the ſeas, to wit, in the kingdom of *Ireland*, according to the uſage and cuſtom of merchants, then and there made his bill of exchange with his own hand thereto ſubſcribed, bearing date the ſame day and year above-mentioned, and directed the ſaid bill of exchange to the ſaid *A.* by the name of Mr. *A. H.* of *Bowſtreet Weſtminſter*, (the ſaid *A.* then reſiding and merchandizing in *Bow-ſtreet* in *Weſtminſter* in the ſaid county of *Middleſex*) and by the ſaid bill of exchange the ſaid *R.* requeſted the ſaid *A.* at 21 days ſight thereof, to pay

to one *S. F.* by the name of Mr. *S. F.* or order, the ſum of 308 *l.* 9 *s.* and 4 *d.* it being for forty double powers, and Mr. *L.* and Mr. *H.*'s half-pay to *June* and *December* 1735. by ſaid powers and bills delivered the ſaid Mr. *F.* *And* the ſaid *S. F.* afterwards, to wit, upon the ſame 25th day of *December* in the year aboveſaid, at *W.* aforeſaid in the ſaid county of *M.* by his indorſement then and there made on the ſaid bill, according to the uſage and cuſtom of merchants, appointed the contents of the ſaid bill to be paid to the ſaid *J. D. B.* by the name of Mr. *D. B.* or order, value in account; *Whereof* the ſaid *A.* then and there had notice. *And* the ſaid *A.* afterwards, to wit, upon the ſaid 25th day of *December* aforeſaid in the year above mentioned, at *W.* aforeſaid in the county aforeſaid, had ſight of the ſaid bill, and then and there according to the uſage and cuſtom of merchants accepted the ſame; by reaſon whereof the ſaid *A.* according to the uſage and cuſtom of merchants, became liable to pay to the ſaid *J. D. B.* the ſaid money mentioned in the ſaid bill: *And* thereupon the ſaid *A.* being ſo liable, in conſideration thereof afterwards, to wit, upon the ſame day and year above mentioned, at *W.* aforeſaid, took upon himſelf, and to the ſaid *J. D. B.* then and there faithfully promiſed to pay him the ſaid ſum of money in the ſaid bill contained, according to the tenor of the ſaid bill.

Indorſed to plaintiff.

Notice to defendant.

Bill accepted by defendant.

Aſſumpſit.

A count

A count for money lent.
Another for money had and received.

Declaration in caſe Sur aſſ. *on a foreign bill of exchange by the perſon to whom made payable, againſt the drawer, the drawee refuſing to accept it.* C. B. Paſ. 10 G. 2. ro. 1035. Lil. Ent. 55. *Cuſtom of merchants.*

London, to wit, *J. C.* late of, *&c.* was attached to anſwer unto *T. F.* of a plea of treſpaſs upon the caſe, *&c. And* whereupon the ſaid *T.* by *P. W.* his attorney complaineth, that *whereas* there now is, and from time immemorial hath been, an antient and laudable cuſtom uſed and approved of by and amongſt merchants and other perſons, reſiding, trading, and uſing commerce in parts beyond the ſeas, and merchants and other perſons, reſiding, trading, and uſing commerce within this kingdom of *E.* to wit, that if any merchant or other perſon, reſiding, trading, and uſing commerce in parts beyond the ſeas, ſhall have made any bill of exchange in writing, with his own proper hand thereto ſubſcribed, and ſhall have directed ſuch bill to any merchant or merchants, or other perſon or perſons, reſiding, trading, and uſing commerce within this kingdom of *England*, and by ſuch bill ſhall have required ſuch merchant or merchants, or ſuch other perſon or perſons to whom ſuch bill ſhall have been directed, to pay to any other merchant or other perſon, reſiding, trading, and uſing commerce in parts beyond the ſeas, and named in ſuch bill or order, any ſum of money in ſuch bill mentioned, at any time mentioned in ſuch bill, and appointed by ſuch bill for the payment thereof; and if ſuch merchant or mer-

chants, perſon or perſons, to whom ſuch bill ſhall have been directed, upon ſight of ſuch bill ſhall have refuſed to accept ſuch bill, or to pay ſuch ſum of money in ſuch bill mentioned, at the time mentioned in ſuch bill for payment thereof, to ſuch merchant or other perſon to whom or to whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been appointed to be paid; and if ſuch merchant or other perſon, to whom or whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been appointed to be paid, ſhall have cauſed ſuch bill to be proteſted in writing for ſuch non-acceptance or non-payment thereof; Then ſuch merchant or other perſon, who ſhall ſo have made ſuch bill, upon notice of ſuch non-acceptance or non-payment and proteſt, hath for all the time aforeſaid been liable, and hath been uſed and accuſtomed to be liable, and for all the time aforeſaid hath ought to have been liable, and ſtill is liable to pay to ſuch merchant or other perſon named in ſuch bill, to whom or whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been ſo appointed to have been paid.

Plaintiff and defendant reſiding beyond ſea, drawees reſiding in England.

And whereas at the ſeveral times hereafter next mentioned the ſaid *J.* and *T.* were perſons reſiding, trading, and uſing commerce in parts beyond the ſeas, to wit, at *St. Martin's* in the kingdom of *France*, and one *P. C.* and *D. C.* were perſons reſiding, trading, and uſing commerce within this kingdom of *England*, to wit, at *London* aforeſaid,

ſaid, and the ſaid *P.* and *D.* were then and there partners in their ſaid commerce; And being ſo reſpectively reſiding, trading, and uſing commerce as aforeſaid, the ſaid *I.* on the 3d day of *April* in the year of our Lord 1732. new ſtile, in parts beyond the ſeas, to wit, at *St. Martin's* aforeſaid in the kingdom of *France*, made his certain bill of exchange in writing, with his own proper hand thereto ſubſcribed, according to the cuſtom aforeſaid, and then and there directed the ſaid bill, bearing date the ſame day and year, to the ſaid *P.* and *D.* and by the ſaid bill required the ſaid *P.* and *D.* at two uſances, to pay that his firſt bill of exchange to the ſaid *T.* or order, 75*l.* 18*s.* ſterling, value received of the ſaid *T.* and for ballance of him the ſaid *I.*'s account with the ſaid *P.* and *D.* as by advice from the ſaid *I.* Which ſaid bill of exchange he the ſaid *T.* afterwards, to wit, on the 16th day of *April* in the year of our Lord 1732. *Engliſh* ſtile, at *London* aforeſaid, to wit, at the pariſh of *St. Mary le Bow* in the ward of *Cheap*, ſhewed to the ſaid *P.* and *D.* and then and there required the ſaid *P.* and *D.* to accept the ſaid bill according to the ſaid cuſtom: But the ſaid *P.* and *D.* then and there refuſed to accept the ſaid bill, or ever to pay to the ſaid *T.* the ſaid ſum of money mentioned in the ſaid bill, or any part thereof: By reaſon whereof he the ſaid *T.* afterwards, to wit, on the ſame day and year laſt aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, cauſed the ſaid bill to be duly proteſted in writing,

Bill drawn by defendant payable to plaintiff.

Shewn to the drawees.

They refuſe to accept it.

Bill proteſted.

writing, for ſuch non-acceptance thereof by the ſaid *P.* and *D.* Of which ſaid non-acceptance of the ſaid bill, and of the ſaid proteſt of the ſaid bill for the ſaid non-acceptance thereof, he the ſaid *T.* afterwards, to wit, on the 17th day of *April* in the ſaid year of our Lord 1732. *Engliſh* ſtyle, at *L.* aforeſaid, in the pariſh and ward aforeſaid, gave notice to the ſaid *I.* By reaſon of which ſaid premiſſes, and according to the cuſtom aforeſaid, he the ſaid *I.* became liable to pay to the ſaid *T.* the ſaid ſum of money mentioned in the ſaid bill; And being ſo liable, he the ſaid *I.* in conſideration thereof, afterwards, to wit, the ſame day and year laſt aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T.* to pay him the ſaid ſum of money mentioned in the ſaid bill, when he ſhould be afterwards thereto requeſted. *And whereas* the ſaid *I.* and *T.* and *P.* and *D.* being ſo reſpectively reſiding, trading, and uſing commerce as aforeſaid, and the ſaid *P.* and *D.* being partners in their ſaid commerce as aforeſaid, the ſaid *I.* afterwards, to wit, on the ſaid 3d day of *April* in the year of our Lord 1732. aforeſaid, new ſtile, in parts beyond the ſeas, to wit, at *St. Martin*'s aforeſaid in the ſaid kingdom of *France*, made his certain other bill of exchange in writing, ſubſcribed with his own proper hand, according to the ſaid cuſtom, and the ſaid laſt mentioned bill bearing date the ſame day and year laſt aforeſaid, directed to the ſaid *P.* and *D.* and

Notice to defendant.

Aſſumpſit.

Second count.

Bill drawn by defendant payable to plaintiff.

by the ſaid laſt mentioned bill required the ſaid *P.* and *D.* at two uſances to pay that his firſt bill of exchange to the ſaid *T.* or order, other 75 *l.* 18 *s.* ſterling, value received of him the ſaid *T.* and for ballance of his the ſaid *I.*'s account with the ſaid *P.* and *D.* as by advice from the ſaid *I.* Which ſaid laſt mentioned bill of exchange he the ſaid *T.* afterwards, to wit, on the 26th day of *May* in the year of our Lord 1732. aforeſaid, *Engliſh* ſtile, at *London* aforeſaid, in the pariſh and ward aforeſaid, ſhewed to the ſaid *P.* and *D.* for their acceptance and payment thereof, and then and there requeſted the ſaid *P.* and *D.* to accept and pay the ſaid laſt mentioned bill, according to the tenor of the ſame bill, and the cuſtom aforeſaid: And the ſaid *P.* and *D.* then and there refuſed to accept the ſaid laſt mentioned bill, or ever to pay to the ſaid *T.* the ſaid ſum of money mentioned in the ſaid laſt mentioned bill, or any part thereof: By reaſon of which ſaid laſt mentioned premiſſes he the ſaid *T.* afterwards, to wit, on the ſame day and year laſt aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, cauſed the ſaid laſt mentioned bill to be duly proteſted in writing for ſuch non-acceptance and non-payment thereof by the ſaid *P.* and *D.* Of which ſaid non-acceptance and non-payment of the ſaid laſt mentioned bill, and of the ſaid laſt mentioned proteſt of the ſaid laſt mentioned bill for the ſaid non-acceptance and non-payment thereof, he the ſaid *T.* afterwards, to wit, on the ſaid 26th day of *May*

Shewn to drawees.

They refuſe to accept it.

Bill proteſted.

Notice to defendant.

May in the year of our Lord 1732. aforeſaid, *Engliſh* ſtile, at *L.* aforeſaid, in the pariſh and ward aforeſaid, gave notice to the ſaid *I.* by reaſon whereof, and according to the cuſtom aforeſaid, he the ſaid *I.* became liable [*ut ſupra.*] *And whereas* at the ſeveral times hereafter mentioned the ſaid *I.* and *T.* and *P.* and *D.* were perſons reſiding, trading, and uſing commerce within this kingdom of *England*, to wit, at *L.* aforeſaid, in the pariſh and ward aforeſaid, and the ſaid *P.* and *D.* were then and there partners in their ſaid commerce, and being ſo reſiding, trading, and uſing commerce, the ſaid *I.* afterwards, to wit, on the 3d day of *April* in the year of our Lord 1732. at *L.* aforeſaid, in the pariſh and ward aforeſaid, made his certain other bill of exchange in writing, ſubſcribed with his own proper hand, according to the cuſtom of merchants from time immemorial uſed and approved, and the ſaid laſt mentioned bill, bearing date the ſame day and year laſt aforeſaid, directed to the ſaid *P.* and *D.* and by the ſaid laſt mentioned bill required the ſaid *P.* and *D.* at two uſances to pay that his firſt bill of exchange to the ſaid *T.* or order, other 75*l.* 18*s.* ſterling, value received of the ſaid *T.* and for ballance of his the ſaid *I.*'s account with the ſaid *P.* and *D.* as by advice from the ſaid *I.* which ſaid laſt mentioned bill of exchange he the ſaid *T.* afterwards, to wit, on the 6th day of *June* in the year of our Lord 1732. aforeſaid, at *L.* aforeſaid, at the pariſh and ward aforeſaid, ſhewed to the ſaid

Third count.

Plaintiff, defendant, and drawees reſiding in London.

Bill drawn by defendant payable to plaintiff.

Shewn to drawees.

P. and *D.* and then and there required the ſaid *P.* and *D.* to accept the ſaid laſt mentioned bill according to the ſaid cuſtom; but the ſaid *P.* and *D.* then and there wholly refuſed to accept the ſaid laſt mentioned bill, or ever to pay to the ſaid *T.* the ſaid ſum of money ſpecified in the ſaid laſt mentioned bill, or any part thereof: Of all which ſaid laſt mentioned premiſſes he the ſaid *I.* afterwards, to wit, on the 8th day of *June* in the year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, had notice. By reaſon of which ſaid laſt mentioned premiſſes, and according to the ſaid cuſtom, and by the law of merchants, he the ſaid *I.* became liable [*ut ſupra.*]

They refuſe to accept it.

Notice to defendant.

Indeb. aſſ. for money lent and accommodated 1 *Jan.* 1736.

Had and received.

Laid out and expended.

Caſe Sur aſſ. *againſt an attorney, as drawee of an inland bill of exchange, by a third indorſee, to whom it was indorſed by the ſervant of the ſecond indorſee.* B. R.

Bill drawn by two.

London, to wit, *R. P.* complaineth of *S. T.* gent. one of the attornies of the court of the lord the preſent king before the king himſelf preſent here in court in his proper perſon, *for that*, that is to ſay, that *whereas* one *R. T.* and *W. T.* on the 3d day of *September* in the year of our Lord 1726. at *L.* aforeſaid, that is to ſay, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, according to the uſage and cuſtom of merchants, made their certain firſt bill of exchange in writing, their proper hands being thereunto ſubſcribed, bearing date the ſame day and year, and then and there directed the ſaid bill to the ſaid *S.* by which ſaid bill

the

the ſaid *R.* and *W.* requeſted him the ſaid *S.* that he the ſaid *S.* two months after the date of the ſaid bill, would pay to one *W. F.* Eſq; (by the name of *W. F.*) or his order, 333*l.* 12*s.* ſterling, for value received by them the ſaid *R.* and *W. T.* *And* the ſaid *W. F.* afterwards, that is to ſay, on the day and year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid (the ſaid ſum of money being intirely unpaid to him) indorſed the ſaid bill, his proper hand being thereunto ſubſcribed, and by the ſame indorſement appointed the contents of the ſame bill to be paid to one *T. D.* and *A. W.* then and there being partners in the art of a mercer, by the name of Meſſieurs *D.* and *W.* or their order. *And* the ſaid *T.* (the ſaid *T.* and *A.* then being partners in the ſaid art, and the ſaid ſum of money being wholly unpaid to the ſaid *T.* and *A.*) for himſelf and his ſaid partner, afterwards, that is to ſay, on the day and year aboveſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, indorſed the ſaid bill, his proper hand being thereunto ſubſcribed, and by the ſame indorſement appointed the contents of the ſame bill to be paid to *D. A. M. D.* and *J. G.* by the name of Meſſieurs *D. A.* and comp. or their order, value in account (the ſaid *D. M.* and *J.* then and there being partners in the art of a weaver). *And* the ſame *S.* afterwards, that is to ſay, on the ſame day and year at *L.* aforeſaid, in the pariſh and ward aforeſaid, had ſight of the ſaid bill ſo indorſed, and upon the ſaid ſight thereof

First indorſement to two partners.

Second indorſement by one for himſelf and partner, to three co-partners.

Defendant accepts the bill.

thereof then and there accepted the ſame bill. *And* the ſame *D. M.* and *J.* being partners in the ſaid art of a weaver afterwards, that is to ſay, on the ſame day and year, at *L.* aforeſaid, in the pariſh and ward aforeſaid, one *W. H.* then, and long before and afterwards, being a ſervant of the ſaid *D. M.* and *J.* and by them the ſaid *D. M.* and *J.* uſually intruſted to indorſe ſuch bills on the behalf of the ſaid *D. M.* and *J.* indorſed the ſaid bill for and in the names of the ſaid *D. M.* and *J.* by the names of *D. A.* and comp. and by the ſame indorſement appointed the contents of the ſame bill to be paid to the ſaid *R.* for value received, the ſaid ſum of money in the ſaid bill contained being then wholly unpaid, whereof the ſaid *S.* then and there had notice. *By reaſon* of which ſaid premiſſes, alſo by force of the ſaid cuſtom of merchants, the ſaid *S.* according to the ſaid uſage and cuſtom of merchants, became liable to pay to the ſaid *R.* the ſaid ſum of money, according to the form and effect of the bill and indorſements aforeſaid: *And* being ſo liable, the ſaid *S.* in conſideration thereof, afterwards, that is to ſay, on the 1ſt day of *November* in the year aboveſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *R.* to pay him the ſame ſum of money, according to the tenor of the ſaid bill and indorſements. *And whereas* alſo the ſaid *R.* and *W. T.* on the ſaid 3d day of *September* in the year of our Lord 1726. at *L.* aforeſaid in the pariſh and ward

Third indorſement by a ſervant of the ſecond indorſees.

Notice.

Aſſumpſit.

Second count.

ward aforeſaid, according to the uſage and cuſtom of merchants, made their certain other bill of exchange in writing, their proper hands being thereunto ſubſcribed, bearing date the ſame day and year, and then and there directed that bill to the ſaid *S.* by which ſaid bill the ſaid *R.* and *W. T.* requeſted him the ſaid *S.* that he the ſaid *S.* two months after the date of that bill would pay to the ſaid *W. F.* (by the name of *W. F.*) or his order, other 333*l.* 12*s.* 6*d.* ſterling, for value received by them the ſaid *R.* and and *W. T.* *And* the ſaid *W. F.* afterwards, that is to ſay, on the day and year laſt above-mentioned, at *L.* aforeſaid, in the pariſh and ward aforeſaid, the ſaid ſum of money being intirely unpaid to him, indorſed the ſaid laſt mentioned bill, his proper hand being thereunto ſubſcribed, and by the ſame indorſement appointed the contents of the ſame bill to be paid to the ſaid *T. D.* and *A. W.* then and ſtill being partners in the ſaid art of a mercer, by the names of Meſſieurs *D.* and *W.* or their order. *And* the ſaid *T.* (the ſaid *T.* and *A.* being partners in the ſaid art of a mercer, and the ſaid ſum of money being wholly unpaid to the ſaid *T.* and *A.*) for himſelf and his ſaid partner, afterwards, that is to ſay, on the day and year laſt above-mentioned, at *L.* aforeſaid, in the pariſh and ward aforeſaid, indorſed the ſaid laſt mentioned bill, his proper hand being thereunto ſubſcribed, and by the ſame indorſement appointed the contents of the ſame bill to be paid to the ſaid

Bill drawn.

Firſt indorſement.

Second indorſement.

D. A. M. D. and *J. G.* by the names of Meſſieurs *D. A.* and comp. or their order, value in account (the ſaid *D. M.* and *J.* then and ſtill being partners in the ſaid art of a weaver). *And* the ſaid *S.* afterwards, that is to ſay, on the ſame day and year at *L.* aforeſaid, in the pariſh and ward aforeſaid, had ſight of the ſaid bill ſo indorſed, and then and there upon that ſight thereof accepted the ſaid bill. *And* the ſaid *D. M.* and *J.* being partners in the ſaid art of a weaver, afterwards, and after the end of the ſaid two months, that is to ſay, on the 5th day of *November* in the year aboveſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *W. H.* then, and long before and afterwards, being a ſervant of the ſaid *D. M.* and *J.* and uſually intruſted by the ſaid *D. M.* and *J.* to indorſe ſuch bills on the behalf of the ſaid *D. M.* and *J.* indorſed the ſaid bill for and in the names of the ſaid *D. M.* and *J.* by the names of *D. A.* and comp. and by the ſame indorſement appointed the contents of the ſame bill to be paid to the ſaid *R.* for value received, the ſaid ſum of money in the ſame bill contained then being wholly unpaid; whereof the ſaid *S.* then and there had notice: *By reaſon* of which ſaid premiſſes, alſo by force of the ſaid cuſtom of merchants, the ſaid *S.* according to the ſaid uſage and cuſtom of merchants, became liable to pay to the ſaid *R.* the ſaid laſt mentioned ſum of money; And being ſo liable, the ſaid *S.* in conſideration thereof, afterwards, that is to ſay, on the 10th

Bill accepted.

Third indorſement.

Notice.

Aſſumpſit.

10th day of *November* in the year aboveſaid, at *L.* aforeſaid in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *R.* to pay to him the ſame ſum of money when he ſhould be thereunto requeſted. *Nevertheleſs* the ſaid *S.* not at all regarding his ſaid promiſes and undertakings, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *R.* in this behalf, has not yet paid the ſaid ſeveral ſums of money, or any part thereof, to the ſaid *R.* (altho' the ſaid *S.* afterwards, to wit, on the 1ſt day of *December* in the year of our Lord aforeſaid, at *L.* aforeſaid in the pariſh and ward aforeſaid, was requeſted by the ſaid *R.* ſo to do) but he hath hitherto wholly refuſed, and ſtill doth refuſe, to pay him the ſame, to the damage of the ſaid *R.* of 500 *l.* And thereof he bringeth ſuit, *&c.* *Breach.*

A. B. *for the plaintiff, Defendant in proper perſon,* } *Pledges of proſecuting* { J. D. *and* R. R.

Middleſex, to wit, *G. B.* late of, *&c.* was attached to anſwer *A. M.* and *F. C.* aſſignees of the goods, debts and chattels of *H. V.* a bankrupt, according to the form of the ſtatutes concerning bankrupts made and provided, in a plea of treſpaſs on the caſe, *&c.* *And* whereupon the ſaid *A. M.* and *E. C.* by *W. W.* their attorney complain, *That whereas* the ſaid *G.* after the 1ſt day of *May* in the year of our Lord 1705. and before he the ſaid *H. V.* became a bankrupt, to wit, the —— day of —— in the year of our Lord *Declaration in caſe* Sur aſſ. *by the aſſignees of the effects of a bankrupt.* C. B. *On a promiſſory note drawn by defendant, and indorſed to the bankrupt.*

Lord ——, at *W.* in the ſaid county of *M.* made his certain note in writing, commonly called a promiſſory note, with his own proper hand thereto ſubſcribed, bearing date the ſame day and year laſt mentioned, and the ſame note to one *J. M.* did then and there deliver, by which ſaid note the ſaid *G.* promiſed to pay to the ſaid *J. M.* by the name of *J. M.* Eſq; or order, *one month after* date, —— *value received*; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *G.* became chargeable to pay to the ſaid *J. M.* or his order the ſame ſum of money, according to the tenor of the ſaid note. *And* the ſaid *J. M.* after the making of the ſaid note, and before the ſaid ſum mentioned in the ſaid note, or any part thereof, was paid to him, and alſo before the time by the ſaid note appointed for payment thereof, and alſo before the ſaid *H. N.* became a bankrupt, to wit, the ſame day and year laſt mentioned, at *W.* aforeſaid, indorſed the ſaid note, with his own proper hand thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid note to be paid to the ſaid *H. V.* for value received, and for that purpoſe the ſaid *J. M.* did then and there deliver the ſaid note ſo indorſed to the ſaid *H. V.* Whereof the ſaid *G.* afterwards, to wit, the day and year laſt mentioned, at *W.* aforeſaid, had notice; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *G.* became chargeable to pay to the ſaid *H. V.* the ſame

Indorſement.

Notice.

ſame ſum of money, according to the tenor of the ſame note, and of the indorſement thereon. *And* being ſo chargeable, the ſaid *G.* in conſideration thereof, afterwards, and before the ſaid *H. V.* became a bankrupt, to wit, the —— day of —— in the year of our Lord ——, at *W.* aforeſaid, undertook, and to the ſaid *H. V.* then and there faithfully promiſed to pay to the ſaid *H. V.* the ſame ſum of money mentioned in the ſaid note, according to the indorſement thereon, when afterwards he ſhould be thereunto required. *And whereas* alſo the ſaid *G.* afterwards, and before the ſaid *H. V.* became a bankrupt, to wit, the ſaid —— day of —— in the ſaid year of our Lord ——, at *W.* aforeſaid, was indebted to the ſaid *H. V.* in —— of good and lawful money of *Great Britain*, for ſuch a ſum of money by the ſaid *H. V.* to the ſaid *G.* and at the ſpecial inſtance and requeſt of the ſaid *G.* before that time lent and accommodated; and being ſo indebted, the ſaid *G.* in conſideration thereof, afterwards, and before the ſaid *H. V.* became a bankrupt, to wit, the day and year laſt mentioned, at *W.* aforeſaid, undertook, and to the ſaid *H. V.* then and there faithfully promiſed to pay to the ſaid *H. V.* the ſaid —— laſt mentioned, when afterwards he ſhould be thereunto required. *Nevertheleſs*, the ſaid *G.* not regarding his ſaid ſeveral promiſes and undertakings aforeſaid, in form aforeſaid made, but contriving and fraudulently intending the ſaid *A.* and *E.* in this behalf craftily and ſubtilly to deceive and

Aſſumpſit.

Indeb. aſſump. *for money lent by the bankrupt.*

Breach.

and defraud, hath not yet paid the ſaid ſeveral ſums of money or any part thereof to the ſaid *H.* at any time before he the ſaid *H.* became a bankrupt, or to the ſaid *A.* and *E.* or either of them, at any time after the ſaid *H.* became a bankrupt, (altho' the ſaid *G.* afterwards, to wit, the ſaid —— day of —— in the ſaid year of our Lord ——, and oftentimes afterwards, before he the ſaid *H.* became a bankrupt, and after the ſaid *H.* became a bankrupt, to wit, the —— day of —— in the year of our Lord 1734. and oftentimes as well before as after, by the ſaid *A.* and *E.* at *W.* aforeſaid, was thereunto required) but he hath hitherto altogether refuſed, and ſtill doth refuſe to pay or in any wiſe to content them or either of them for the ſame, to the damage of the ſaid *A.* and *E.* 120 *l.* And thereof they bring ſuit, *&c.*

Declaration in caſe Sur aſſ. *againſt an executor.* C. B.

London, to wit, *W. B.* late of, *&c.* executor of the teſtament and laſt will of *R. B.* widow, deceaſed, was attached to anſwer *W. C.* in a plea of treſpaſs on the caſe, *&c.* *And* whereupon the ſaid *W. C.* by *J. C.* his attorney complaineth, *That whereas* after the 1ſt day of *May* which was in the year of our Lord 1705. to wit, on the —— day of —— in the year of our Lord ——, the ſaid *R.* in her life-time at *L.* to wit, at the pariſh of *St. Bridget*, otherwiſe *Bride*'s, in the ward of *Farringdon without*, made her certain note in writing, called a promiſſory note, ſubſcribed with the proper hand and name of her the ſaid *R.* bearing date the ſame

By the ſecond indorſee of a promiſſory note drawn by the teſtatrix.

ſame day and year laſt aboveſaid, and the ſame note ſo ſubſcribed then and there, to wit, on the ſame day and year laſt above mentioned, at *L.* aforeſaid in the pariſh and ward aforeſaid, delivered to one *R. B.* by which note the ſaid *R.* promiſed to pay to the ſame *R. B.* or order, 40*l. three months after date, for value* in the ſame note mentioned to be received. *And* the ſaid *R.* (to whom or to whoſe order the payment of the ſaid money in the ſame note contained was appointed to be made) afterwards, and before the payment of the money in the ſaid note contained, to wit, on the ſame —— day of —— in the ſaid year of our Lord 1730. at *L.* aforeſaid, in the pariſh and ward aforeſaid, by a certain indorſement in writing, ſubſcribed with the proper hand of the ſaid *R.* and indorſed upon the ſame note, did aſſign the aforeſaid note, and by that indorſement did appoint and order the contents of the aforeſaid note to be paid to one *M. Y.* or her order, for value in the ſame indorſement mentioned to be received. *And* the aforeſaid *M.* (to whom or to whoſe order the payment of the ſaid ſum of money contained in the ſame note was by the ſame indorſement appointed to be made) afterwards, and before the payment of the money aforeſaid contained in the ſaid note, to wit, on the ſame —— day of ——, in the year of our Lord 1730. aboveſaid, at *L.* aforeſaid in the pariſh and ward aforeſaid, by another indorſement in writing, ſubſcribed with the proper hand of the ſaid *M.* and indorſed upon

First indorſement.

Second indorſement.

upon the ſaid note, did aſſign the ſame note, and by that indorſement did appoint and order the contents of the aforeſaid note to be paid to the ſaid *W. C.* according to the tenor of the aforeſaid note. *Of which* ſaid indorſements the ſaid *R.* in her life-time afterwards, to wit, on the ſame —— day of —— in the year of our Lord 1730. aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, had notice by the ſaid *W. C.* *By reaſon* of which ſaid premiſſes, and alſo by force of the ſtatute in that caſe lately made and provided, the aforeſaid *R.* in her life-time was and became chargeable to pay to the ſaid *W. C.* the ſaid ſum of 40*l.* in the ſaid note contained, according to the tenor of the ſame note, and of the ſaid two indorſements thereon made as aforeſaid. *And* being ſo chargeable, *&c.*

Notice.

Aſſumpſit.

Declaration in caſe Sur aſſ. *on a promiſſory note by an indorſee, againſt the indorſor an attorney.* B. R. *Note made payable to defendant or order.*

Middleſex, to wit, *J. G.* Gent. complaineth of *J. B.* Gent. one of the attornies of the court of our lord the king, before the king himſelf, being preſent here in court in his proper perſon; *For that whereas* one *J. S.* after the 1ſt day of *May* in the year of our Lord 1705. to wit, on the 22d day of *December* in the year of our Lord 1733. at *W.* in the county of *M.* aforeſaid, made his certain note in writing, commonly called a promiſſory note, with his own proper hand thereto ſubſcribed, bearing date the ſame day and year laſt mentioned, and the ſame note to the ſaid *J. B.* did then and there deliver; by which ſaid note the ſaid *J. S.* promiſed to pay to the ſaid *J. B.* by the name of

of Mr. *J. B.* or order, *three months after date*, 100*l. value received*; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *J. S.* became chargeable to pay to the ſaid *J. B.* or his order, the ſame ſum of money, according to the tenor of the ſaid note. *And* the ſaid *J. B.* after the making of the ſaid note, and before the ſaid ſum of money or any part thereof was paid to him, to wit, the day and year laſt mentioned, at *W.* aforeſaid indorſed the ſaid note, with his own proper hand thereto ſubſcribed, and thereby ordered the contents of the ſaid note to be paid to the ſaid *J. G.* or order, for value received; and for that purpoſe the ſaid *J. B.* then and there delivered the ſaid note to the ſaid *J. G.* *And* the ſaid *J. G.* avers, that after the indorſement and appointment ſo as aforeſaid made, and after the expiration of the three months in the ſaid note mentioned, to wit, the 24th day of *March* in the year laſt mentioned, at *W.* aforeſaid, he the ſaid *J. G.* did ſhew the ſaid note and the ſaid indorſement thereon to the ſaid *J. S.* to pay the contents of the ſaid note, to wit, the ſaid 100*l.* ſpecified in the ſame, according to the tenor of the ſaid note and indorſement; but the ſaid *J. S.* did not pay, nor hath yet paid the ſame ſum of money to the ſaid *J. G.* but hath hitherto always refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *J. G.* Whereof the ſaid *J. G.* afterwards, to wit, the ſame day and year laſt mentioned, at *W.* aforeſaid, gave notice

He indorſes it to the plaintiff.

The drawer refuſes to pay it.

Notice to defendant.

Plaintiff has not indorſed the note.

to the ſaid *J. B. And* the ſaid *J. G.* to whom or to whoſe order the payment of the ſaid ſum of money contained in the ſaid note was to be made, hath made no order to any perſon of or concerning the ſaid note, or the ſaid ſum of 100*l.* mentioned in the ſame: By reaſon whereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *J. B.* became chargeable to pay to the ſaid *J. G.* the ſaid 100*l.* in the ſaid note mentioned. *And* being ſo chargeable, the ſaid *J. B.* in conſideration thereof, afterwards, to wit, the ſame day and year laſt mentioned, at *W.* aforeſaid, undertook, and to the ſaid *J. G.* then and there faithfully promiſed to pay to the ſaid *J. G.* the ſame ſum of money, according to the force, form and effect of the ſame note.

Aſſumpſit.

Declaration in caſe Sur aſſ. C. B.

Middleſex, to wit, *J. R.* late of the pariſh of *St. Paul Covent-Garden*, Eſq; was attached to anſwer *J. F. L.* of a plea of treſpaſs upon the caſe, *&c. And whereupon* the ſaid *J. F. L.* by *J. S.* his attorney complaineth, *That whereas* the ſaid *J. R.* on the 1ſt day of *Auguſt* in the year of our Lord 1742. at *W.* in the ſaid county of *M.* was indebted to the ſaid *J. F. L.* in the ſum of 100*l.* of good and lawful money of *Great Britain*, for certain work, labour, attendance and ſervice of the ſaid *J. F. L.* before that time done and performed by the ſaid *J. F. L.* in his buſineſs of a muſician, at the theatre royal in *Covent-Garden*, for the ſaid *J. R.* at his ſpecial inſtance and requeſt; and alſo for other work and labour done and performed by

Indeb. aſſ. *for work, &c. in the buſineſs of a muſician at the play-houſe.*

by him the said *J. F. L.* for the said *J. R.* at his like instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay him the said sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time done and performed certain other work, labour, attendance and service in his business of a musician, at the theatre royal in *Covent-Garden* aforesaid; and also other work and labour for the said *J. R.* at his like instance and request, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him so much money as he the said *J. F. L.* had reasonably deserved to have from the said *J. R.* for the same. And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same, another sum of 100*l.* of like lawful money, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was indebted to the said *J. F. L.* in the further sum of 100*l.* of like lawful money of *Great Britain,*

Quantum meruit *thereon.*

Indeb. ass. *for work, &c. by plaintiff's wife, in the business of an actress and singer at the playhouse.*

Britain, for certain work, labour, attendance and ſervice of *I.* the wife of the ſaid *J. F. L.* before that time done and performed by the ſaid *I.* the wife of the ſaid *J. F. L.* whilſt ſhe was the wife of the ſaid *J. F. L.* in her buſineſs of an actreſs and ſinger at the theatre royal in *Covent-Garden* aforeſaid; and alſo for other work, labour and ſervice done and performed by her whilſt ſhe was the wife of the ſaid *J. F. L.* for the ſaid *J. R.* at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid *J. R.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *W.* aforeſaid, undertook, and to the ſaid *J. F. L.* then and there faithfully promiſed to pay to him the laſt mentioned ſum of money. *And whereas alſo* the ſaid *J. R.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *W.* aforeſaid, in conſideration that the ſaid *I.* the wife of the ſaid *J. F. L.* at the ſpecial inſtance and requeſt of the ſaid *J. R.* had before that time, whilſt ſhe was the wife of the ſaid *J. F. L.* done and performed certain other work, labour, attendance and ſervice, in her buſineſs of an actreſs and ſinger at the theatre royal in *Covent-Garden* aforeſaid, and other work and labour for the ſaid *J. R.* at his like inſtance and requeſt undertook, and to the ſaid *J. F. L.* then and there faithfully promiſed to pay him ſo much money as he had reaſonably deſerved to have from the ſaid *J. R.* for the ſame: And the ſaid *J. F. L.* doth aver, that he reaſonably deſerved to have from

Quantum meruit *thereon.*

from the ſaid *J. R.* for the ſame another ſum of 100*l.* of like lawful money of *Great Britain*, that is to ſay, at *W.* aforeſaid, whereof the ſaid *J. R.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice *. *Nevertheleſs* the ſaid *J. R.* not regarding his ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *J. F. L.* in this behalf, hath not paid to him the ſaid ſeveral ſums of money, or any of them, or any part thereof; although to pay the ſame to him the ſaid *J. F. L.* he the ſaid *J. R.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *W.* aforeſaid, was requeſted by the ſaid *J. F. L.* but the ſaid *J. R.* to pay the ſame to him hath hitherto altogether refuſed, and doth yet refuſe, to the damage of the ſaid *J. F. L.* of 150*l.* And thereof he bringeth ſuit, *&c.* *Breach.*

London, to wit, *R. L.* late of, *&c.* was attached to anſwer unto *J. R.* in a plea of treſpaſs on the caſe, *&c.* *And whereupon* the *Declaration in caſe* Sur aſſumpſit. C. B.

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* *Indeb. aſſumpſit* by baron and feme, for work done by the wife, *ad damnum ipſorum*, upon a ſpecial promiſe made to the wife only, the wife muſt be made a party to the action, but not on a promiſe implied by law; the law will not imply any promiſe made to the wife, ſhe is ſervant to the husband, who was at the charge in providing materials, *&c.* to carry on the trade; therefore he ought to have the recompence, and therefore the law implies the promiſe was made to him only. Judgment *Quod nil capiat per billam.* Carth. 251.

Indeb. aſſ. *for meat, drink, waſhing and lodging, found for defendant's wife.*

ſaid *J.* by *L. R.* his attorney complaineth, *That whereas* the ſaid *R.* on the —— day of —— in the year of our Lord 1734. at *L.* to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted unto the ſaid *J.* in 12 *l.* for meat, drink, waſhing and lodging, by the ſaid *J.* before that time found and provided for * one *H.* the wife of the ſaid *R.* at the ſpecial inſtance and requeſt of the ſaid *R.* and being ſo indebted, he the ſaid *R.* in conſideration thereof, afterwards, to wit, the ſame day and year aboveſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid undertook, and then and there faithfully promiſed the ſaid *J.* to pay him the ſaid ſum of money, when he ſhould be afterwards thereunto requeſted. *And whereas afterwards,* to wit, the ſame day and year aboveſaid, at *L.* aforeſaid, in the pariſh and ward afore-

Quantum meruit *thereon.*

* The husband and wife lived ſeparate, ſhe boarded in the plaintiff's houſe, who declares againſt the huſband, as for meat and drink found and provided for the husband. On evidence it appeared to be for the wife. *Prat* C. J. held it did not ſupport the declaration; for though the husband is chargeable upon his implied contract for what neceſſaries are adminiſtred to the wife, and therefore if goods are delivered to her, the vendor may declare generally for goods ſold and delivered; yet in this caſe the plaintiff fails in his deſcription of the ſubject matter of the contract; ſo that where he now declares generally, a recovery in this action could not be pleaded in bar to a ſpecial action for meat and drink found and provided for the wife, *Mich.* 5 *G.* 1. *Guildhall, Ramſden* v. *Ambroſe.* The like determination by *Eyre* C. J. *Trin.* 12 *G.* 1. *Hadley* v. *Collins.* Vide *Strange* 127.

ſaid,

ſaid, in conſideration that the ſaid *J.* had before that time found and provided other meat, drink, waſhing and lodging for the ſaid *H.* the ſaid wife of the ſaid *R.* and at the like ſpecial inſtance and requeſt of the ſaid *R.* he the ſaid *R.* undertook, and then and there faithfully promiſed the ſaid *J.* to pay him ſo much money as he therefore reaſonably deſerved to have: And the ſaid *J.* doth aver, that he therefore reaſonably deſerved to have of the ſaid *R.* other 12 *l.* to wit, at *L.* aforeſaid in the pariſh and ward aforeſaid; whereof the ſaid *R.* then and there had notice. *Yet*, &c.

Breach.

Middleſex, to wit: *Be it remembered*, that on the —— day of ——, in this ſame term, *T. H.* came here into court by *S. G.* his attorney, and exhibited to the juſtices of our lord the king here his certain bill againſt *L. J.* one of the attornies of the court of our lord the king of the bench preſent here in court in his own proper perſon, of a plea of treſpaſs on the caſe, which ſaid bill followeth in theſe words, to wit, *Eaſter term* in the 10th year of the reign of king *George* II. *To* the juſtices of our lord the king of the common bench, *Middleſex*, to wit, *T. H.* by *J. G.* his attorney complaineth of *L. J.* one of the attornies of the court of the bench of our ſovereign lord the king preſent here in court in his own proper perſon, *for that whereas* the ſaid *L.* the 1ſt day of *April* in the year of our Lord 1736. at *W.* in the ſaid county of *M.* was indebted to the ſaid *F.* in 60 *l.* of lawful money of *Great*

Memorandum of a bill againſt an attorney C. B.

Bill in caſe Sur aſſumpſit *againſt an attorney.*

Indeb. aſſ. *for the uſe and occupation of a meſuage.*

Britain, for the uſe and occupation of a certain meſuage, or tenement and garden, with the appurtenances of him the ſaid *T.* lying and being at *H.* in the county aforeſaid, before that time held, uſed and occupied by the ſaid *L.* at his ſpecial inſtance and requeſt from the ſaid *T.* and by his permiſſion; and being ſo indebted, the ſaid *L.* afterwards, that is to ſay, the ſame day and year aboveſaid, at *W.* aforeſaid in the county aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *T.* to pay him the ſaid ſum of money when he ſhould be thereto required.

Quantum meruit. *And alſo whereas* the ſaid *L.* afterwards, that is to ſay, the ſame day and year aboveſaid, at *W.* aforeſaid in the county aforeſaid, in conſideration that the ſaid *T.* at the like ſpecial inſtance and requeſt of him the ſaid *L.* had before that time permitted him the ſaid *L.* to have and uſe a certain other meſuage or tenement and garden, with the appurtenances of him the ſaid *T.* lying and being in *H.* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T.* to pay him ſo much money as he had reaſonably deſerved to have for the ſame, when he the ſaid *L.* ſhould be thereto required: And the ſaid *T.* in fact ſaith, that he reaſonably deſerved to have for the ſame from the ſaid *L.* other 60 *l.* of like lawful money, to wit, at *W.* aforeſaid in the county aforeſaid; whereof the ſaid *L.* afterwards, to wit, the ſame day and

and year aforeſaid, at *W.* aforeſaid in the county aforeſaid had notice. *Yet*, &c.

Middleſex, to wit, *W. P.* late of the pariſh of *St. Clement Danes* in the county of *Middleſex*, vintner, was attached to anſwer *J. F.* and *T. G.* in a plea of treſpaſs upon the caſe, *&c.* And whereupon the ſaid *J.* and *T.* by *H. S.* their attorney complain, that *whereas* the ſaid *W.* together with one *T. T.* lately deceaſed (whom the ſaid *W.* ſurvived) in the life of the ſaid *T. T.* that is to ſay, on, *&c.* at, *&c.* were indebted to the ſaid *J. F.* and *T. G.* in 100*l.* of lawful money, *&c.* for ſo much money by the ſaid *W. P.* and *T. T.* in the life-time of the ſaid *T. T.* of the ſaid *J. F.* and *T. G.* and to the uſe of the ſaid *J. F.* and *T. G.* before that time had and received; and being ſo indebted, the ſaid *W. P.* and *T. T.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year at, *&c.* undertook, and to the ſaid *J. F.* and *T. G.* then and there faithfully promiſed that they the ſaid *W. P.* and *T. T.* would well and faithfully pay and content the ſaid 100*l.* to the ſaid *J. F.* and *T. G.* when they ſhould be thereunto afterwards requeſted. *And alſo whereas* afterwards, that is to ſay, on the ſame day and year aboveſaid at, *&c.* the ſaid *W. P.* and *T. T.* in the life-time of the ſaid *T. T.* were indebted [for money lent.] *Nevertheleſs* the ſaid *W. P.* and *T. T.* in the life-time of the ſaid *T. T.* and the ſaid *W. P.* after the death of the ſaid *T. T.* not regarding their ſaid ſeveral promiſes and undertakings made

Declaration in caſe Sur aſſ. *againſt the ſurvivor, on a joint promiſe.* C. B.

Indeb. aſſ. *for money had and received.*

Indeb. aſſ. *for money lent.*

in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *J. F.* and *T. G.* in this behalf, have not paid, nor has either of them paid the ſaid ſeveral ſums of money, or any of them, or any part thereof, to the ſaid *J. F.* and *T G.* or to either of them, (altho' ſo to do the ſaid *W. P.* after the death of the ſaid *T. T.* that is to ſay, on the 3d day, *&c.* at, *&c.* was requeſted by the ſaid *J. F.* and *T. G.*) but they wholly refuſed, and the ſaid *W. P.* ſtill refuſeth to pay the ſame to them, or any ways to content them for the ſame, to the damage of the ſaid *J. F.* and *T. G.* of 100*l.* And thereof they bring ſuit, *&c.* *Serj. Pengelly.*

Declaration in caſe Sur aſſ. *by aſſignees of the goods of a bankrupt.* C.B.

London, to wit, *E. H.* late of, *&c.* and *T. T.* late of, *&c.* were attached to anſwer *J. B. G. C.* and *W. C.* aſſignees of the debts, goods and chattels of *A. B.* and *B. R.* bankrupts, according to the form of the ſtatute made and provided concerning bankrupts, in a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *J. G.* and *W.* by *H. S.* their attorney complain, wherefore *whereas* the ſaid *E.* and *T.* on the 30th day, *&c.* at, *&c.* were indebted to the ſaid *J. G.* and *W.* as being aſſignees of the debts, goods and chattels of the ſaid *A.* and *B.* bankrupts as aforeſaid, in 50*l.* of lawful money, *&c.* for ſo much money by the ſaid *E.* and *T.* of the ſaid *A.* and *B.* before that time had and received; and being ſo indebted, *&c.* undertook, and to the ſaid *J. G.* and *W.* then and

Indeb. aſſ. *for money had and received.*

and there faithfully promiſed that, *&c.* to the ſaid *J. G.* and *W.* when, *&c.* would well and faithfully pay and content. *And also whereas* the ſaid *E.* and *T.* afterwards, that is to ſay, on the ſame 30th day, *&c.* at, *&c.* accounted together with the ſaid *J. G.* and *W.* being aſſignees, *&c.* as aforeſaid, concerning divers other ſums of money to the ſaid *J. G.* and *W.* as being aſſignees, *&c.* as aforeſaid, before that time due, and then being in arrear and unpaid, and on the ſaid account the ſaid *E.* and *T.* then and there were found in arrear to the ſaid *J. G.* and *W.* in 48 *l.* 16 *s.* 6 *d.* of like lawful money, *&c.* and being ſo found in arrear, *&c.* *Nevertheleſs* the ſaid, *&c.* intending the ſaid *J. G.* and *W.* in this behalf craftily, *&c.* or any part thereof, to the ſaid *J. G.* and *W.* or to either of them, (altho' often requeſted) have not, nor has either of them paid, but have intirely refuſed and ſtill do refuſe to pay the ſaid ſeveral ſums of money to the ſaid *J. G.* and *W.* or any ways content them for the ſame, to the damage of the ſaid *J. G.* and *W.* of 50 *l.* And thereupon they bring ſuit, *&c.*

Inſimul computaſſent.

Breach.

Serj. Pengelly.

Cumberland, ſſ. *W. F.* Gent. complaineth of *W. W.* in the cuſtody of the marſhal, *&c.* *For that whereas* on the 1ſt day of *October* in the year of our Lord 1737. at *P.* in the ſaid county, it was agreed between the ſaid *W. F.* and *W. W.* to play together at a certain game with cards, called *Hazard*, for money upon

Declaration in caſe Sur aſſ. *for money won at play.* B. R.

Agreement.

Mutual promiſes. upon tick; And thereupon the ſaid *W. F.* at the ſpecial inſtance and requeſt of the ſaid *W. W.* aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. W.* that he the ſaid *W. F.* would pay to the ſaid *W. W.* all ſuch ſums of money not exceeding in the whole the ſum of 10*l.* as he the ſaid *W. W.* ſhould win of the ſaid *W. F.* at that play; and in conſideration thereof, the ſaid *W. W.* afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. F.* that he the ſaid *W. W.* would pay to the ſaid *W. F.* all ſuch ſums of money, not exceeding in the whole the ſum of 10*l.* as he the ſaid *W. F.* ſhould win of the ſaid *W. W.* at that play. *And* the ſaid *W. F.* in fact ſaith, that they the ſaid *W. F.* and *W. W.* in purſuance of the ſaid agreement, afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, played together at the ſaid game called *Hazard* for money on tick, and the ſaid *W. F.* then and there at the ſaid play did win of the ſaid *W. W.* ſeveral ſums of money, amounting in the whole to a leſſer ſum of money than 10*l.* to wit, the ſum of 5*l.* of lawful money of *Great Britain*. *And alſo whereas* afterwards, to wit, on the 2d day of *October* in the year aforeſaid, at *P.* aforeſaid, it was agreed between the ſaid *W. F.* and *W. W.* that they the ſaid *W. F.* and *W. W.* would play together at the ſaid game for money upon tick; and thereupon the ſaid *W. F.* at the ſpecial inſtance and requeſt of the ſaid *W.*

Averment.

Second count.

W. W. aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. W.* that he the ſaid *W. F.* would pay to the ſaid *W. W.* all ſuch ſums of money as he the ſaid *W. W.* ſhould win of the ſaid *W. F.* at that play; and in conſideration thereof, the ſaid *W. W.* afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. F.* that he the ſaid *W. W.* would pay to the ſaid *W. F.* all ſuch ſums of money as he the ſaid *W. F.* ſhould win of the ſaid *W. W.* at that play: And the ſaid *W. F.* in fact ſaith, that they the ſaid *W. F.* and *W. W.* in purſuance of the ſaid agreement in that reſpect, afterwards, to wit, on the ſame day and year aforeſaid, at *P.* aforeſaid, played together at the ſaid game called *Hazard* for money on tick, and the ſaid *W. F.* then and there at that play did win of the ſaid *W. W.* divers ſums of money, amounting in the whole to the ſum of 5 *l.* of lawful money of *G. B.* *And alſo whereas* afterwards, to wit, on the 3d day of *October* in the year aforeſaid, at *P.* aforeſaid, it was agreed between the ſaid *W. F.* and *W. W.* that they the ſaid *W. F.* and *W. W.* would play together at a certain game with cards, commonly called *Bankeſalet*, otherwiſe *Bankavalet*, for money on tick, and thereupon the ſaid *W. F.* at the ſpecial inſtance and requeſt of the ſaid *W. W.* aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. W.* that he the ſaid *W. F.* would pay to the ſaid *W. W.* all ſuch ſums of money *Third count.*

ney not exceeding in the whole the ſum of 10*l.* as he the ſaid *W. W.* ſhould win of the ſaid *W. F.* at that play; and in conſideration thereof, the ſaid *W. W.* afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. F.* that he the ſaid *W. W.* would pay to the ſaid *W. F.* all ſuch ſums of money not exceeding in the whole the ſum of 10*l.* as he the ſaid *W. F.* ſhould win of the ſaid *W. W.* at that play: And the ſaid *W. F.* in fact ſaith, that they the ſaid *W. F.* and *W. W.* in purſuance of the ſaid agreement in that reſpect, afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, did play together at the ſaid game commonly called *Bankefalet*, otherwiſe *Bankavalet*, for money on tick, and he the ſaid *W. F.* then and there at that play did win of the ſaid *W. W.* ſeveral ſums of money, amounting in the whole to a leſſer ſum of money than the ſum of 10*l.* to wit, the ſum of 5*l.* &c. *And alſo whereas* afterwards, to wit, on the 5th day of *October* in the year aforeſaid, at *P.* aforeſaid, it was agreed between the ſaid *W. F.* and *W. W.* that they the ſaid *W. F.* and *W. W.* would play together at the ſaid laſt mentioned game for money upon tick, and thereupon the ſaid *W. F.* at the ſpecial inſtance and requeſt of the ſaid *W. W.* aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. W.* that he the ſaid *W. F.* would pay to the ſaid *W. W.* all ſuch ſums of money as he the ſaid *W. W.* ſhould win

Fourth count.

win of the ſaid *W. F.* at that play; and in conſideration thereof the ſaid *W. W.* afterwards, to wit, on the ſame day and year, at *P.* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *W. F.* that he the ſaid *W. W.* would pay to the ſaid *W. F.* all ſuch ſums of money as he the ſaid *W. F.* ſhould win of the ſaid *W. W.* at the ſaid laſt mentioned play: And the ſaid *W. F.* in fact ſaith, that they the ſaid *W. F.* and *W. W.* in purſuance of the ſaid agreement in that reſpect, afterwards, to wit, on the ſame day and year, played together at the ſaid laſt mentioned game for money on tick, and that he the ſaid *W. F.* at that play did win of the ſaid *W. W.* ſeveral ſums of money, amounting in the whole to the ſum of 5 *l. &c.* to wit, at *P.* aforeſaid. *And alſo whereas* the ſaid *W. W.* the ſame day and year laſt mentioned, at *P.* aforeſaid, was indebted to the ſaid *W. F.* in 5 *l.* of, *&c.* for money by the ſaid *W. W.* to the uſe of the ſaid *W. F.* before that time had and received, and alſo for other money by the ſaid *W. F.* to the ſaid *W. W.* and at his ſpecial inſtance and requeſt before that time lent, and alſo for other money by the ſaid *W. F.* for the aforeſaid *W. W.* at his like inſtance and requeſt before that time paid, laid out and expended; and thereupon being ſo indebted, the ſaid *W. W.* in conſideration thereof, afterwards, to wit, on the ſame day and year aboveſaid, at *P.* aforeſaid, aſſumed upon himſelf, and to the ſaid *W. F.* then and there faithfully promiſed that

Indeb. aſſ. *for money had and received, money lent, and money laid out.*

that he the ſaid *W. W.* the aforeſaid ſum of money laſt mentioned, to the ſaid *W. F.* when afterwards he ſhould be thereunto re-
Breach. quired, would well and faithfully pay: *Neverthelesſ* the ſaid *W. W.* not regarding his ſeveral promiſes and aſſumptions made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. F.* in this reſpect, hath not paid to the ſaid *W. F.* the ſaid ſeveral ſums of money, or any of them, or any part thereof, (although the ſaid *W. W.* afterwards, to wit, on the 6th day of *October* in the year aforeſaid, at *P.* aforeſaid, was requeſted by the ſaid *W. F.* to pay him the ſame) but hath hitherto wholly refuſed, and ſtill refuſeth to pay the ſame to the ſaid *W. F.* to the damage of the ſaid *W. F.* of 10 *l.* And thereof he bringeth ſuit, *&c.* Pledges, *&c.*

Declaration in caſe Sur aſſ. *againſt an executor, for money had and received of and for the plaintiffs and to their uſe.*

3 D. A. 393. p. 13. S. C. 3 Lev. 57. S. C. Tr. 33 Car. 2. Ro. 1097, 1098, 1099.

Huntingdonſhire, to wit, *H. F.* late of *H.* in the county aforeſaid innholder, executor of the teſtament of *T. W.* was attached to anſwer *T. L. J. H.* and *E. C.* of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *T. L. J.* and *E.* by *R. C.* their attorney complain, Wherefore whereas the ſaid *T. W.* in his life-time, to wit, on the 5th day of *October* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* at *H.* was indebted to the ſaid *T. L. J.* and *E.* in 100 *l.* of lawful money of *England*, as well for money by the ſaid *T. W.* in his life-time before that time had and received of the ſaid *T. L. J.*

J. and *E.* as for money by the ſaid *T. W.* in his life-time before that time had and received for the ſame *T. L. J.* and *E.* to the proper uſe of the ſaid *T. L. J.* and *E.* and the ſaid *T. W.* being ſo thereupon indebted, the ſaid *T. W.* in his life-time afterwards, to wit, on the ſame day and year at *H.* aforeſaid, in conſideration thereof undertook, and to the ſaid *T. L. J.* and *E.* then and there faithfully promiſed that he the ſaid *T. W.* would well and truly pay and content the ſaid 100*l.* to the ſaid *T. L. J.* and *E.* when he ſhould be thereunto afterwards requeſted. *Yet* the ſaid *T. W.* in his life-time, *Breach.* and the ſaid *H.* after the death of the ſaid *T. W.* not minding his ſaid promiſe and undertaking, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T. L. J.* and *E.* in this behalf, have not paid or in any manner ſatisfied, nor has either of them paid or in any manner ſatisfied the ſaid 100*l.* or any part thereof, to the ſaid *T. L. J.* and *E.* or to either of them. Altho' afterwards the ſaid *T. L.* in his life-time, to wit, on the 10th day of *November* in the 32d year aforeſaid, and the ſaid *H.* after the death of the ſaid *T. W.* to wit, on the 7th day of *December* in the 32d year aforeſaid, at *H.* aforeſaid, were thereunto ſeverally requeſted by the ſaid *T. L. J.* and *E.* but they intirely refuſed to pay them the ſame, and the ſaid *H.* ſtill refuſeth to pay them the ſame, to the damage of the ſaid *T. L. J.* and *E.* of 120*l.* And thereof they bring ſuit, *&c.*

And

Plea. *And* the ſaid *H.* by *G. M.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T. L. J. H.* and *E. C.* ought not to have their ſaid action againſt him, *&c.* Becauſe he ſaith that the ſaid *T. W.* in his life-time, to wit, on the 6th day of *September* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. at *H.* aforeſaid, by his certain writing obligatory acknowledged himſelf to be bound to one *D. H.* in 40 *l.* to be paid to the ſaid *D. H.* when he ſhould be thereunto requeſted; which ſaid writing was made by the ſaid *T. W.* to the ſaid *D. H.* for a true and juſt debt, and which at the time of the death of the ſaid *T. W.* was no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *D. H.* *Whereby* the ſaid *D. H.* after the death of the ſaid *T. W.* (the ſaid debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the now king, in the court of our lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of the ſaid lord the king of the bench here, to wit, at *W.* impleaded the ſaid *H.* of and for the ſaid 40 *l.* then and yet unpaid, by the writ of our ſaid lord the king, of debt returnable and returned in the ſaid court; in which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *D. H.* by *R. C.* then his attorney ſaid, that whereas the ſaid *T.* in his life-time, on the 6th day of *September* in the 33d year of the reign of our ſovereign lord *Charles* II. now king

A bond entered into by the teſtator.

Defendant impleaded thereon.

king of *England*, *&c.* at *H.* aforeſaid, by his certain writing obligatory acknowledged himſelf to be bound to the ſaid *D. H.* in the ſaid 40*l.* to be paid to the ſaid *D. H.* when he ſhould be thereunto requeſted; yet the ſaid *T.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* altho' often required, had not rendered the ſaid 40*l.* to the ſaid *D. H.* but had intirely refuſed to render the ſame to him, and the ſaid *H. F.* then refuſed to render the ſame to the ſaid *D. H.* and unjuſtly detained; wherefore he then ſaid that he was injured, and had damage to the value of 40*l.* and thereof he brought ſuit, *&c.* And he then brought here into court the ſaid writing, which teſtified the ſaid debt in form aforeſaid, the date whereof was on the day and year aforeſaid, *&c.* And the ſaid *H.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and the ſame attorney then ſaid that he was not informed by the ſame *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *D. H.* and he ſaid nothing elſe thereupon; whereby the ſaid *D. H.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered by the ſame court, that the ſaid *D. H.* ſhould recover againſt the ſaid *H. F.* his ſaid debt and his damages, by the occaſion of the detaining that debt, to 40*s.* adjudged by the court here to the ſaid *D. H.* by his aſſent to be levied of the goods and chattels which were the ſaid *T. W.*'s at the time of his death in the hands of the ſaid *T.*

And judgment againſt him by Non informatus.

to be adminiſtred, if he had ſo much in his hands to be adminiſtred, and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H.* and that the ſaid *H. F.* ſhould then be in mercy, *&c.* as by the record and proceſs thereupon remaining in the ſame court of our ſaid lord the king here plainly appeareth: Which ſaid judgment ſo as aforeſaid obtained, was obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no ways reverſed or annulled; and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid *D.* *And* the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, to wit, on the ſaid 6th day of *September* in the 32d year of the reign of our ſaid lord the preſent king, at *H.* aforeſaid, by his certain other writing obligatory acknowledged himſelf to be bound to the ſaid *D. H.* in other 40 *l.* to be paid to the ſaid *D. H.* when he ſhould be thereunto required; which ſaid writing obligatory laſt mentioned was alſo made by the ſaid *T.* to the ſaid *D. H.* for another true and juſt debt, and which at the time of the death of the ſaid *T. W.* was no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *D. H.* and the ſame writing obligatory ſtill remaineth in its full force and effect; and the ſaid debt at the time of the death of the ſaid *T. W.* was in arrear, and ſtill is in arrear unpaid to the ſaid *D. H.* *And* the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, to wit, on the ſaid 6th day of *September* in the ſaid

Another bond entered into by the teſtator.

Another bond entered into by the teſtator.

32d year of the reign of our said lord the present king, at the town of *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40 *l.* of lawful money of *England*, to be paid to the said *D.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect; and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* *And* the said *H. F.* further saith, that the said *T. W.* in his life-time, to wit, on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40 *l.* of like lawful money of *England*, to be paid to the same *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T. W.* in his life-time to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect, and that debt at the time of the

Another bond entered into by the testator.

death of the ſaid *T. W.* was in arrear, and ſtill is in arrear unpaid to the ſaid *D. H.* *And* the ſaid *H. F.* further ſaith, that the right honourable *E.* Earl of *S.* on the 25th day of *March* in the year of our Lord 1677. at the town of *H.* in the county aforeſaid, demiſed to the ſaid *T. W.* in his life-time one meſſuage called the priory-houſe, one dove-houſe, one cloſe of paſture called the priory-cloſe, one other cloſe of paſture called *Jeas Grove*, one other cloſe of paſture called *Straughton's Grove*, one other cloſe called *Middle St. Herbert's*, and three other cloſes of paſture called the *Infield cloſes*, with the appurtenances, within the pariſh of *St. Mary* in the town of *H.* aforeſaid; To have and occupy the ſaid tenements to the ſaid *T. W.* from the ſaid 25th day of *March* in the year of our Lord 1677. aforeſaid, until the end and term of one whole year thence next enſuing, and fully to be complete and ended, and ſo from year to year, ſo long as it ſhould pleaſe both the ſaid parties: Rendering therefore yearly, ſo long as the ſaid *T. W.* ſhould hold and occupy the ſaid tenements with the appurtenances, by virtue of the ſaid demiſe, to the ſaid earl and his aſſigns 56 *l.* of lawful money of *England*, to be paid at the feaſts of *St. Michael* the archangel, and the annunciation of the bleſſed virgin *Mary*, by equal portions; by virtue of which ſaid demiſe the ſaid *T.* in his life-time, on the 26th day of *March* in the year of our Lord 1677. aforeſaid, entered into the ſaid tenements with the appurtenances,

Rent due by teſtator on a leaſe parol.

nances, and was poſſeſſed thereof and occupied the ſaid tenements by the ſpace of three years and the half of one year thence next enſuing, and 56 *l.* of the rent aforeſaid at the feaſt of *St. Michael* the archangel laſt paſt for one whole year then ended, were in arrear unpaid by the ſaid *T. W.* in his life-time to the ſaid earl; which ſaid 56 *l.* for the rent aforeſaid, ſo as aforeſaid due, were a true and juſt debt, and at the time of the death of the ſaid *T. W.* was no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid earl; Whereby the ſaid earl, after the death of the ſaid *T. W.* (the ſame debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the preſent king, in the court of our ſaid lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of our ſaid lord the king of the bench here, to wit, at *W.* impleaded the ſaid *H. F.* after the death of the ſaid *T. W.* of and for the ſaid 56 *l.* then and ſtill unpaid, by the writ of our ſaid lord the king of debt returnable and returned in the ſame court; in which ſaid plea the ſaid parties appearing in the ſame court, the ſaid earl by *J. R.* his attorney then ſaid, that he the ſame earl on the 25th day of *March* in the year of our Lord 1677. at *H.* aforeſaid, had demiſed to the ſaid *T. W.* in his life-time one meſuage called the priory-houſe, one, *&c. (ut ſupra)* with the appurtenances, within the pariſh of *St. Mary* in *H.* aforeſaid; To hold and occupy to the ſaid *T. W.* from the ſaid 25th day of *March*

Defendant impleaded thereon.

in the year of our Lord 1677. aforesaid unto the full end and term of one whole year thence next ensuing and fully to be complete and ended, and so from year to year so long as it should please both the said parties; rendring therefore yearly, so long as the said *T. W.* should occupy the said tenements with the appurtenances, to the said earl and his assigns 56*l.* of lawful money of *England*, to be paid at the feast of St. *Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions: By virtue of which said demise the said *T. W.* entered into the said tenements with the appurtenances, and was possessed thereof and occupied the same tenements by the space of three years and the half of one year, and 56*l.* of the rent aforesaid were in arrear unpaid by the said *T. W.* to the said earl at the feast of St. *Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said earl to demand and have of the said *T. W.* in his life-time the said 56*l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 56*l.* but they had to that time refused to render the same to him, and the said *H.* then refused to render the same to him, and unjustly detained the same: Whereupon he then said that he was injured, and had damages to the value of 40*l.* And therof he then brought suit. *And* the said *H. F.* by *G. M.* his attorney

torney came and defended the force and injury when, *&c.* and the ſame attorney then ſaid that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H.* to the ſaid earl, and ſaid nothing elſe thereupon; whereby the ſaid earl remained thereupon undefended againſt the ſaid *H. F.* Therefore it was then conſidered by the ſaid court, that the ſaid earl ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by occaſion of the detaining that debt to 40*s.* adjudged by the court here to the ſaid earl, by his aſſent to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould then be in mercy, *&c.* as by the record and proceedings thereupon remaining in the court of our ſaid lord the king here may more fully appear: Which ſaid judgment ſo as aforeſaid obtained, was alſo obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no way reverſed or annulled; and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid earl. And the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, to wit, on the 4th day of *December* in the 30th year of the reign of our ſaid lord the preſent king, at *H.* aforeſaid, accounted together with one

And judgment againſt him by Non ſum informatus.

And Teſtator indebted upon an Inſimul computaſſet.

D. W. Gent. of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *D. W.* and upon that accounting the ſaid *T. W.* in his life-time was found in arrearage to the ſaid *D. W.* in 96*l.* of lawful money of *England*; and the ſaid *T. W.* in his life-time afterwards ſatisfied the ſaid *D. W.* 54*l.* 6*s.* and 8*d.* thereof, and 41*l.* 13*s.* and 4*d.* the reſidue of the ſaid 96*l.* were a true and juſt debt of the ſaid *T. W.* at the time of his death, and no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *D. W.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *D. W.* after the death of the ſaid *T. W.* (the ſame reſidue of the ſaid debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our ſaid lord the king, in the court of our ſaid lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of our ſaid lord the king of the bench here, to wit, at *W.* aforeſaid, impleaded the ſaid *H. F.* of and for the ſaid 41*l.* 13*s.* and 4*d.* reſidue of the ſaid 96*l.* by the writ of our ſaid lord the king of debt returnable and returned in the ſame court: In which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *D. W.* by *J. R.* his attorney ſaid, that whereas the ſaid *T. W.* in his life-time, to wit, on the ſaid 4th day of *December* in the ſaid 30th year of the reign of our ſaid lord the preſent king, accounted together with the ſaid *D. W.* of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *D. W.*

Defendant impleaded thereon.

D. W. and upon that accounting the ſaid *T. W.* in his life-time was found in arrear to the ſaid *D. W.* in 96 *l.* of lawful money of *England*, whereby an action accrued to the ſaid *D. W.* to demand and have of the ſaid *T. W.* in his life-time the ſaid 96 *l.* and the ſaid *T. W.* in his life-time afterwards ſatisfied to the ſaid *D. W.* 54 *l.* 6 *s.* and 8 *d.* thereof: Yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* altho' often requeſted, have not rendered, nor hath either of them rendered the ſaid 41 *l.* 13 *s.* and 4 *d.* reſidue of the ſaid 96 *l.* to the ſaid *D. W.* but they had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Wherefore he ſaid that he was injured, and had damage to the value of 40 *l.* And thereof he then brought ſuit, *&c.* *And* the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and ſaid that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *D. W.* and he ſaid nothing elſe thereupon; whereby the ſaid *D. W.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered that the ſaid *D. W.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by the occaſion of the detaining of that debt to 50 *s.* adjudged by the court here to the ſaid *D.* by his aſſent to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid

And judgment againſt him by Non ſum informatus.

ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereupon remaining in the ſame court of our ſaid lord the king here more fully appeareth: Which ſaid judgment ſo as aforeſaid obtained, was alſo obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no ways reverſed or annulled, and the ſaid debt and damages are ſtill in arrear unpaid to the ſaid *D. W.* *And* the ſaid *H. F.* further ſaith that the ſaid *T. W.* in his life-time, to wit, on the 2d day of *November* in the 32d year of the reign of our ſaid lord *Charles* II. now king of *England*, &c. at the town of *H.* accounted together with one *H. A.* of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *H. A.* and upon that accounting the ſaid *T. W.* in his life-time was found in arrear to the ſaid *H. A.* in 43*l.* 18*s.* and 4*d.* to be paid to the ſaid *H. A.* when he ſhould be thereunto afterwards requeſted; which ſaid 43*l.* 18*s.* and 4*d.* ſo as aforeſaid found in arrear upon the ſaid accounting, were a true and juſt debt, and were no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *H. A.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *H. A.* after the death of the ſaid *T. W.* (the ſame debt not being ſatisfied) to wit, in *Eaſter* term in the 33d year of the reign of

Teſtator indebted on an Inſimul computaſſet.

Defendant impleaded thereon.

of our ſaid lord the preſent king, in the court of the ſaid lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of our ſaid lord the king of the bench here, to wit, at *W.* impleaded the ſaid *H. F.* of and for the ſaid 43*l.* 18*s.* and 4*d.* by the writ of our ſaid lord the king of debt returnable and returned in the ſame court: In which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *H. A.* by *J. R.* his attorney ſaid, that whereas the ſaid *T. W.* in his life-time, to wit, on the 2d day of *November* in the 32d year of the reign of our ſovereign lord *Charles* the Second, now king of *England*, &c. at the town of *H.* accounted together with the ſaid *H. A.* of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *H. A.* and upon that accounting the ſaid *T. W.* in his life-time was found in arrear to the ſaid *H. A.* in the ſaid 43*l.* 18*s.* and 4*d.* to be paid to the ſaid *H.* when he ſhould be afterwards thereunto requeſted; whereby an action accrued to the ſaid *H. A.* to demand and have of the ſaid *T. W.* in his life-time the ſaid 43*l.* 18*s.* and 4*d.* yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* altho' often requeſted, had not rendered, nor had either of them rendered the ſaid 43*l.* 18*s.* and 4*d.* to the ſaid *H. A.* but they had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Whereupon he then ſaid that he was injured, and had damage to the value of 40*l.*

And

Judgment againſt him by Non ſum informatus.

And thereof he then brought ſuit, *&c. And* the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and the ſame attorney ſaid that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *H. A.* and he ſaid nothing elſe thereupon; whereby the ſaid *H. A.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered that the ſaid *H. A.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by occaſion of the detaining that debt to 40*s.* adjudged by the court here to the ſaid *H. A.* by his aſſent to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king here more fully appeareth; which ſaid judgment ſo as aforeſaid obtained, was obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no ways reverſed or annulled, and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid *H. A.*

Rent due by teſtator on a leaſe.

And the ſaid *H. F.* further ſaith, that one *J. F.* Gent. on the 20th day of *April* in the year of our Lord 1677, at *H.* aforeſaid, demiſed to the ſaid *T. W.* a cloſe of land called the

the back-yard with the appurtenances, adjoining to a certain meſuage then in the occupation of the ſaid *T. W.* within the pariſh of *St. Mary* in the town of *H.* aforeſaid; To hold and occupy to the ſaid *T. W.* from the feaſt of the annunciation of the bleſſed virgin *Mary* then laſt paſt, unto the end and term of ten years thence next enſuing, and fully to be complete and ended: Rendring therefore yearly during the ſaid term to the ſaid *J. F.* and his aſſigns 5 *l.* of lawful money of *England*, to be paid at the feaſts of St. *Michael* the archangel and the annunciation of the bleſſed virgin *Mary*, by equal portions; by virtue of which demiſe the ſaid *T. W.* in his life-time entered into the ſaid cloſe with the appurtenances, and was poſſeſſed thereof, and 5 *l.* of the ſaid rent was in arrear unpaid by the ſaid *T. W.* to the ſaid *J.* at the feaſt of St. *Michael* the archangel laſt paſt, for one whole year then ended; which ſaid 5 *l.* for the ſaid rent ſo as aforeſaid due, were his true and juſt debt, and which was no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *J.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *J. F.* after the death of the ſaid *T.* (the ſaid debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our ſovereign lord the preſent king, in the court of our ſaid lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of our ſaid lord the king of the bench here, to wit, at *W.* impleaded the ſaid *H. F.* after the death of the ſaid

Defendant impleaded thereon.

ſaid *T. W.* of and for the ſaid 5*l.* then and yet unpaid, by the writ of our lord the king of debt returnable and returned in the ſame court: In which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *J. F.* by *J. R.* his attorney ſaid, that whereas the ſaid *J. F.* on the 20th day of *April* in the year of our Lord 1678. aforeſaid, at *H.* aforeſaid, had demiſed to the ſaid *T. W.* one cloſe of land called the back-yard with the appurtenances, adjoining to a certain meſuage then in the occupation of the ſaid *T. W.* within the pariſh of St. *Mary* in *H.* To hold and occupy to the ſaid *T. W.* from the feaſt of the annunciation of the bleſſed virgin *Mary* then laſt paſt, unto the end and term of ten years thence next enſuing, and fully to be complete and ended: Rendring therefore yearly during the ſaid term, to the ſaid *J. F.* and his aſſigns, 5*l.* of lawful money of *England*, to be paid at the feaſts of St. *Michael* the archangel and the annunciation of the bleſſed virgin *Mary*, by equal portions; by virtue of which ſaid demiſe the ſaid *T. W.* in his life-time entered into the ſaid cloſe with the appurtenances, and was poſſeſſed thereof, and 5*l.* of the ſaid rent were in arrear unpaid by the ſaid *T. W.* in his life-time to the ſaid *J. F.* at the feaſt of St. *Michael* the archangel laſt paſt, for one whole year then ended; whereby an action accrued to the ſaid *J. F.* to demand and have of the ſaid *T. W.* in his life-time the ſaid 5*l.* Yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* al-

tho'

tho' often requeſted, had not then rendered, nor had either of them rendered the ſaid 5*l.* to the ſaid *J. F.* but they had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Wherefore he ſaid that he was injured, and had damage to the value of 40*s.* And thereof he then brought ſuit, *&c.* And the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and the ſaid attorney then ſaid, that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *J. F.* and he ſaid nothing elſe thereupon; whereby the ſaid *J. F.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered by the ſaid court, that the ſaid *J. F.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by occaſion of the detaining that debt, to 40*s.* adjudged by the court here to the ſaid *J. F.* by his aſſent to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould then be in mercy, *&c.* as by the record and proceedings thereon remaining in the ſaid court of our ſaid lord the king here more fully may appear: Which ſaid judgment ſo as aforeſaid obtained, was obtained for a true and juſt debt, and which ſtill

And judgment againſt him by Non ſum informatus.

ſtill remaineth in its full force and effect, no ways reverſed or annulled, and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid *J. F.* *And* the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, to wit, on the 9th day of *November* in the 32d year of the reign of our ſaid lord the now king, at *H.* aforeſaid, was indebted to the ſaid *J. F.* in 36*l.* 7*s.* and 3*d.* of lawful money of *England*, for divers wares and merchandizes of the ſaid *J. F.* before that time bargained and ſold to the ſaid *T. W.* which ſaid 36*l.* 7*s.* and 3*d.* were the true and juſt debt of the ſaid *T. W.* at the time of his death, and were no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *J. F.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *J. F.* after the death of the ſaid *T.* (the ſame debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our ſovereign lord the preſent king, in the court of our ſaid lord the king before Sir *Francis North*, Knt. and his companions, then juſtices of our ſaid lord the king of the bench here, to wit, at *W.* aforeſaid, impleaded the ſaid *H. F.* of and for the ſaid 36*l.* 7*s.* and 3*d.* by the writ of our ſaid lord the king of debt returnable and returned in the ſame court; in which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *J. F.* by *J. R.* his attorney ſaid, that whereas the ſaid *T. W.* in his life-time, to wit, on the 9th day of *November* in the 32d year of the reign of our ſovereign lord the preſent king,

Teſtator indebted for goods ſold.

Defendant impleaded thereon:

king, at *H.* aforeſaid, had bought of the ſaid *J. F.* eighty-ſix dozen and five pounds of candles for 21 *l.* and 10 *s.* ten dozen of ſoap for 40 *s.* and 3 *d.* fourteen pounds of tobacco for 25 *s.* [ſeveral other goods in like manner ſpecified] to be paid to the ſaid *J. F.* when he ſhould be thereunto requeſted; which ſaid ſeveral ſums of money in the whole amount to 36 *l.* 7 *s.* and 3 *d.* Yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* altho' often requeſted, had not then rendered, nor had either of them rendered the ſaid 36 *l.* 7 *s.* and 3 *d.* to the ſaid *J. F.* but had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Wherefore he then ſaid that he was injured, and had damage to the value of 40 *l.* And thereof he then brought ſuit, *&c.* *And* the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and the ſaid attorney then ſaid, that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *J. F.* and he ſaid nothing elſe thereupon; whereby the ſaid *J. F.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered by the ſaid court, that the ſaid *J. F.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by the occaſion of the detaining that debt, to 40 *s.* adjudged by the court here to the ſaid *J. F.* by his aſſent to be levied of the goods and

And judgment againſt him by Non ſum informatus.

chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtered; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereon remaining in the ſame court of our ſaid lord the king here more fully appeareth: Which ſaid judgment ſo as aforeſaid obtained, was obtained for a true and juſt debt, and ſtill remaineth in in full force and effect, no ways reverſed or annulled; and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid *J. F.*

Teſtator indebted for goods bought.

And the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, to wit, on the 30th day of *Auguſt* in the ſaid 32d year of the reign of our ſovereign lord the preſent king, at *H.* aforeſaid, was indebted to one *W. A.* in 78 *l.* of lawful money of *England*, for divers wares and merchandizes of the ſaid *W. A.* before that time bargained and ſold to the ſaid *T. W.* in his life-time; which ſaid 78 *l.* were the true and juſt debt of the ſaid *T. W.* at the time of his death, and were no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *W. A.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *W. A.* after the death of the ſaid *T. W.* (the ſaid debt not being ſatisfied) to wit, in the term of the *Holy Trinity* in the 33d year aforeſaid, in the court of our ſaid lord the king, before the king himſelf then being at

Defendant impleaded thereon in B. R.

W.

W. aforesaid, impleaded the said *H. F.* of and for the said 78 *l.* by his certain bill against the said *H. F.* in the custody of the marshal, *&c.* of a plea of debt, and there were then pledges of prosecuting, to wit, *J. D.* and *R. R.* by which said bill the said *W. A.* complained against the said *H. F.* executor of the testament of the said *T. W.* deceased, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea that he render to him 78 *l.* of lawful money of *England*, which he unjustly detained from him, for that, to wit, that whereas the said *T. W.* in his life-time, to wit, on the 30th day of *August* in the 32d year of the reign of our sovereign lord *Charles* II. now king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had bought of the said *W.* two pipes of *Canary* for 78 *l.* to be paid to the said *W.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not, nor had either of them then paid the said 78 *l.* to the said *W. A.* but had to that time refused, and the said *H. F.* then refused to pay him the same, to the damage of the said *W. A.* of 5 *l.* And thereof he then brought suit, *&c.* *And* the said *H. F.* by *J. N.* then his attorney came and said, that he could not deny the said action of the said *W. A.* nor but that he detained from the said *W. A.* the said 78 *l.* in the said declaration above-mentioned, in

And judgment against him by Non potest dedicere actionem.

manner and form as the ſaid *W. A.* above declared againſt him: Therefore it was conſidered, that the ſaid *W. A.* recover againſt the ſaid *H.* his ſaid debt, and his damages which he ſuſtained, as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in this behalf expended, adjudged to the ſaid *W. A.* by his aſſent to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had then ſo much thereof in his hands; and if he had not ſo much thereof in his hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereon now remaining in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* aforeſaid, more fully appeareth: Which ſaid judgment ſo as aforeſaid obtained, was alſo obtained for a true and juſt debt, and which ſtill remaineth in its full force and effect, no ways reverſed or annulled; and the debt and damages aforeſaid are ſtill in arrear unpaid to the ſaid *W. A.* *And* the ſaid *H. F.* further ſaith, that he hath fully adminſtred all the goods and chattels which were of the ſaid *T. W.* at the time of his death; and that he hath no goods or chattels which were of the ſaid *T. W.* at the time of his death in his hands to be adminiſtred, nor had he on the day of ſuing out the original writ of the ſaid *T. L. J. H.* and *E. C.* nor at any time afterwards, except

Plene adminiſtravit præter, &c.

except goods and chattels to the value of 100*s.* which are bound and liable to the executions of the ſaid ſeveral judgments, and to the payment of the ſaid ſeveral ſums by the ſaid writings as aforeſaid due and unpaid; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T. L. J. H.* and *E. C.* ought to have their ſaid action againſt him, *&c.*

And the ſaid *T. L. J.* and *E.* ſay, that they by any thing before alledged ought not to be barred from having their ſaid action, becauſe they ſay that one writing obligatory of the ſaid three writings obligatory of 40*l.* above pleaded in bar, made to the ſaid *D. H.* by the ſaid *T. W.* in his life-time as aforeſaid, upon which judgment is not yet obtained by the ſaid *D.* to wit, the writing obligatory of the three writings obligatory above ſecondly mentioned, was made and conditioned by a condition to the ſame writing obligatory ſubſcribed, for the true and certain payment of the full and juſt ſum of 20*l.* and 18*s.* of good and lawful money of *England*, to the ſaid *D. H.* his executors, adminiſtrators or aſſigns, upon the 24th day of *June* then and now next enſuing, that then the ſaid writing obligatory ſhould be void; And this they are ready to verify: Wherefore they pray judgment, and their damages by occaſion of the premiſſes to be adjudged to them. *Replication, that one of the writings obligatory was conditioned for the payment of a leſs ſum at a day yet to come.*

And the ſaid *H.* ſaith, that the plea by the ſaid *T. J.* and *E.* in manner and form above pleaded by replying, and the matter therein *Demurrer.*

therein contained, are not ſufficient in law to maintain the action of the ſaid *T. J.* and *E.* againſt the ſaid *H. F.* To which the ſaid *H. F.* hath no need, and is not bound by the law of the land in any manner to anſwer; And this he is ready to verify: Wherefore, for default of a ſufficient replication in this behalf, the ſaid *H. F.* demurreth in law, and as before prayeth judgment, and that the ſaid *T. L. J.* and *E.* may be barred from having their ſaid action againſt him the ſaid *H. F.* &c. *And* for cauſes of demurring in law upon the ſaid plea, the ſaid *H.* according to the form of the ſtatute in ſuch caſe lately made and provided declareth, and to the court here ſheweth the following cauſes, to wit: For that the ſaid *T. L. J.* and *E.* by their ſaid replication have not anſwered any thing as to two writings obligatory of the ſaid three writings obligatory above pleaded in bar, nor as to the ſaid ſeveral judgments ſo as aforeſaid pleaded in the ſaid bar of the ſaid *H. F.* as by the law of the land the ſaid *T. J.* and *E.* ought by replying to have alledged; and alſo for that, that the ſaid *T. L. J.* and *E.* by their ſaid replication do not ſufficiently anſwer to the ſaid plea of the ſaid *H.* nor do they confeſs and avoid, nor traverſe or deny the matter in the bar of the ſaid *H.* ſo as aforeſaid pleaded; and alſo for that, that the ſaid *T. J.* and *E.* by their ſaid replication ought to have pleaded further in form following, or to the like effect, to wit, that the ſaid *H. F.* on the day of ſuing out the ſaid original writ of the ſaid *T. J.*

Cauſes of Demurrer.

and

and *E.* had divers goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of him the ſaid *H. F.* to be adminſtred, to the value of the ſaid 200*l.* in the ſaid declaration ſpecified, beſides goods and chattels which were liable and bound by the ſaid executions of the ſaid ſeveral judgments, and to the payment of the ſaid 20*l.* and 18*s.* in the ſaid condition of the ſaid writing mentioned, and to the ſaid ſeveral ſums of money by ſaid other writing as aforeſaid due, ſo that the ſaid *H.* might have joined iſſue thereupon in due form of law.

And the ſaid *T. L. J.* and *E.* for that they have above alledged ſufficient matter in law for them the ſaid *T. L. J.* and *E.* to maintain their action againſt the ſaid *H.* which they are ready to verify, which ſaid matter the ſaid *H.* doth not deny, nor any way anſwer thereto, but intirely refuſeth to admit the verifying the ſame, as before, pray judgment, and their damages by occaſion of the premiſſes to be adjudged to them, *&c.* *And* becauſe the juſtices here would adviſe themſelves of and upon the premiſſes before they give judgment thereon, a day is given to the ſaid parties here until from the day of St. *Michael* in three weeks, to hear their judgment thereupon, for that the ſaid juſtices here are not yet, *&c.* *

Joinder in Demurrer.

Continuance by Cur. adviſar. vult.

* Judgment for the defendant, becauſe the plaintiff did not ſay in his replication that the defendant had aſſets

Declaration in case Sur aſſ. *on a feigned iſſue touching a* Modus decimandi. C. B.

—— to wit, *C. P.* late of, *&c.* was attached to anſwer the right honourable *D.* lord *H.* of a plea of treſpaſs upon the caſe; And whereupon the ſaid *D.* lord *H.* by *M. H.* his attorney complaineth, wherefore *whereas* on the 21ſt day of *December* in the 30th year of the reign of our Lord the preſent king, at the pariſh of *K.* in the county aforeſaid, a certain diſcourſe was moved and had between the ſaid *D.* lord *H.* and the ſaid *C.* of and concerning three tenements of the ſaid *D.* lord *H.* in the pariſh of *K.* aforeſaid, with the lands thereunto reſpectively appertaining, formerly parcel of the poſſeſſion of the late diſſolved monaſtery of *Bellalanda*, otherwiſe *Byland*, in the county aforeſaid, to wit, one tenement with the appurtenances then in the poſſeſſion of one *J. R.* another tenement with the appurtenances then in the poſſeſſion of one *R. M.* and another tenement with the appurtenances called *Great Combe*, then in the poſſeſſion of one *C. B.* Upon which ſaid diſcourſe the ſaid *D.* lord *H.* aſſerted and affirmed, that the proprietors and tenants of the ſaid tenement in the poſſeſſion of the ſaid *J. R.* from the time to the contrary whereof the memory of man is not, have paid and been uſed, and bound to pay to the rector of the pariſh-church of *K.* aforeſaid, for the time being,

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aſſets *ultra*, to pay the 20 *l.* for, if he had not, he is not obliged to pay the plaintiff the debt upon contract before the debt upon bond due at a day yet to come. 3 *Lev.* 57. S. C.

eight

eight fleeces of wool, and 4 *s.* of lawful money of *England*, yearly and every year, in lieu and compenſation of all and all manner of tithes growing, increaſing and renewing upon the ſame tenement, and the lands thereunto belonging, within the pariſh aforeſaid; *And* that for the whole time aforeſaid the proprietors and tenants of the ſaid tenement in the poſſeſſion of the ſaid *R. M.* have paid, and been uſed and bound to pay to the rector of the pariſh-church of *K.* aforeſaid, for the time being, 1 *s.* 5 *d.* of lawful money of *England*, yearly and every year, in lieu and compenſation of all and all manner of tithes growing, increaſing and renewing upon the ſame tenement and the lands thereunto belonging, within the pariſh aforeſaid; *And* alſo that all the proprietors and tenants of the ſaid tenement called *Great Combe*, from the time to the contrary whereof the memory of man is not to the contrary, have paid, and been uſed and bound to pay to the rector of the pariſh-church of *K.* aforeſaid, for the time being, ten fleeces of wool and two lambs, at the feaſt of St. *John* the baptiſt, yearly and every year, in lieu and compenſation of all and all manner of tithes growing, increaſing and renewing upon the ſame tenement, and the lands thereunto belonging, within the pariſh aforeſaid: Which ſaid ſeveral preſcriptions and manners of tithing the ſaid *C.* then and there denied, aſſerting that the tithes for the ſame tenements are and have been payable in kind. *And* there- Aſſumpſit.
upon the ſaid *C.* on the ſame 21ſt day of

December

December in the 30th year aforeſaid, at the pariſh of *K.* aforeſaid, in conſideration that the ſaid *D.* lord *H.* at the ſpecial inſtance and requeſt of the ſaid *C.* had then and there paid to the ſaid *C.* 50 *s.* of lawful money of *England*, undertook and faithfully promiſed the ſaid *D.* lord *H.* that if ſuch preſcription and manner of tithing concerning the ſaid tenement in the poſſeſſion of the ſaid *J. R.* as the ſaid *D.* lord *H.* then and there had aſſerted, was true, then he the ſaid *C.* would well and truly pay 40 *s.* of like lawful money to the ſaid *D.* lord *H.* when afterwards he ſhould be thereunto requeſted; and alſo, that if ſuch preſcription and manner of tithing concerning the ſaid tenement in the poſſeſſion of the ſaid *R. M.* as the ſaid *D.* lord *H.* then and there had aſſerted, was true, then he the ſaid *C.* would well and truly pay other 40 *s.* of like lawful money to the ſaid *D.* lord *H.* when afterwards he ſhould be thereunto requeſted: And further, that if ſuch preſcription and manner of tithing concerning the ſaid tenement called *Great Combe*, as the ſaid *D.* lord *H.* then and there had aſſerted, was true, then he the ſaid *C.* would well and truly pay other 40 *s.* of like lawful money to the ſaid *D.* lord *H.* when afterwards he ſhould be thereunto requeſted. *And* the ſaid *D.* lord *H.* in fact ſaith, that at the time of the ſaid diſcourſe ſuch reſpective preſcriptions and manners of tithing concerning the ſeveral and reſpective tenements aforeſaid, as were aſſerted by the ſaid *D.* lord *H.* as aforeſaid, were

Averment.

were and ſtill are true; whereof the ſaid *C.* afterwards, to wit, on the laſt day of *December* in the 30th year aforeſaid, at the pariſh of *K.* aforeſaid, had notice: *Neverthe-* *Breach.*
leſs the ſaid *C.* no ways regarding his ſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending to deceive and defraud the ſaid *D.* lord *H.* in the premiſes, hath not yet paid the ſaid ſeveral ſums, amounting in the whole to 6 *l.* to the ſaid *D.* lord *H.* (altho' the ſaid *C.* on the 10th day of *January* in the 30th year aforeſaid, and often afterwards, at the pariſh of *K.* aforeſaid, was requeſted to pay the ſame); but he has hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore the ſaid *D.* lord *H.* ſaith that he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *C.* by —— his attorney *Plea.*
cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *D.* lord *H.* ought not to have his ſaid action againſt him, becauſe he ſaith, that well and true it is that he did undertake in manner and form as the ſaid *D.* lord *H.* hath above declared againſt him; but the ſaid *C.* further ſaith, as to the firſt promiſe in the ſaid declaration ſpecified, that the tithes from time to time growing, increaſing and renewing upon the tenement in the poſſeſſion of the ſaid *J. R.* always have been paid, and ought to be paid in kind; *Without this*, that the proprietors and tenants of the ſame tenements, from the time to the contrary where-

of

of the memory of man is not, have been uſed and bound to pay to the rector of the pariſh-church of *K.* aforeſaid, for the time being, eight fleeces of wool, and 4*s.* of lawful money of *England*, yearly and every year, in lieu and compenſation of tithes, growing, increaſing and renewing upon the ſame tenement and the lands thereunto belonging, within the ſaid pariſh, as the ſaid *D.* lord *H.* above in his ſaid declaration has alledged: And this he is ready to verify. And as to the ſecond promiſe, *&c.* [the plea to the ſecond and third promiſes reſpectively as above, the traverſe to each in the very words of the preſcription] Wherefore he prayeth judgment, if the ſaid *D.* lord *H.* ought to have his ſaid action againſt him, *&c.*

Replication. *And* the ſaid *D.* lord *H.* *as to* the plea of the ſaid *C.* as to the firſt promiſe in the ſaid declaration ſpecified, ſaith that all the proprietors and tenants of the ſaid tenement in poſſeſſion of the ſaid *J. R.* from the time to, *&c.* [in the words of the preſcription] in manner and form as the ſaid *D.* lord *H.* in his ſaid declaration hath alledged; And of this he putteth himſelf upon the country: *And* the ſaid *C.* doth ſo likewiſe, *&c.* *And* as to the ſaid plea of the ſaid *C.* as to the ſecond promiſe in the ſaid declaration ſpecified, the ſaid *D.* lord *H.* ſaith that [in the words of the preſcription] in manner and form as the ſaid *D.* lord *H.* in his ſaid declaration hath alledged; And of this he putteth himſelf upon the country: *And* the

ſaid

ſaid *C.* doth ſo likewiſe, *&c. And* as to the ſaid plea of the ſaid *C.* as to the third promiſe in the ſaid declaration ſpecified, the ſaid *D.* lord *H.* ſaith, that [in the words of the preſcription] in manner and form as the ſaid *D.* lord *H.* in his ſaid declaration hath alledged; And of this he putteth himſelf upon the country: *And* the ſaid *C.* doth ſo likewiſe, *&c.*

Declaration in caſe Sur aſſ. *The defendant, in conſideration his elder brother would not convey lands to his younger brother, promiſes to pay him* 20 l.

—— to wit, *A. S.* late of, *&c.* was attached to anſwer *W. S.* of a plea of treſpaſs upon the caſe, *&c.* And whereupon the ſaid *W.* by *J. S.* his attorney complaineth, that *whereas H. S.* brother of the ſaid *A.* and *W.* now deceaſed, in his life-time, to wit, on the 9th day of *January* in the —— year of, *&c.* was ſeiſed in his demeſne as of fee, of and in a cloſe called *B.* lying and being in the pariſh of *G.* in the county of *Y.* and the ſaid *H.* being ſo ſeiſed thereof, and then languiſhing with a certain diſeaſe, declared that he the ſaid *H.* then intended to convey to the ſaid *W.* and his heirs for ever (the ſaid *W.* then being the youngeſt brother of the ſaid *H.*) the ſaid cloſe, unleſs the ſaid *A.* would conſent and promiſe to pay to the ſaid *W.* 20 *l.* of lawful money of *England*: Of which ſaid intention of the ſaid *H.* the ſaid *A.* afterwards, to wit, on the ſame day and year, at *D.* aforeſaid, having notice, the ſaid *A.* then being brother and heir apparent of the ſaid *H.* in conſideration that the ſaid *H.* at the ſpecial inſtance and requeſt of the ſaid *A.* would forbear to convey the ſaid cloſe to the ſaid *W.* undertook, and then and

C. B.

there faithfully promiſed the ſaid *H.* that he the ſaid *A.* would well and truly pay to the ſaid *W.* the ſum of 20 *l.* of lawful money of *England*, when after the death of the ſaid *H.* he ſhould be thereunto requeſted. *And* the ſaid *W.* in fact ſaith, that the ſaid *H.* truſting to the ſaid promiſe and undertaking of the ſaid *A.* did forbear to convey the ſaid cloſe to the ſaid *W.* and afterwards, to wit, on the 15th day of *January* in the —— year of, *&c.* at, *&c.* died without iſſue of his body begotten, whereby the ſaid cloſe deſcended to the ſaid *A.* as brother and heir of the ſaid *H.* *And alſo* whereas the ſaid *H.* in his life-time, to wit, on the ſaid 9th day of *January* in the —— year of, *&c.* was ſeiſed in his demeſne as of fee, of and in a certain other cloſe in the pariſh of *D.* aforeſaid, called *B.* and the ſaid *H.* being ſo ſeiſed thereof, and then being in an ill ſtate of health, the ſaid *H.* on the ſaid 9th day of *January* in the —— year of, *&c.* for the mutual love and affection which he then had towards the ſaid *W.* his youngeſt brother, appointed a certain deed to be written and prepared, to be executed by the ſaid *H.* by which the ſaid *H.* would convey and aſſure the ſaid other cloſe to the ſaid *W.* and his heirs for ever, in reverſion immediately after the death of the ſaid *H.* the ſaid *A.* having notice thereof, and then being brother and heir apparent of the ſaid *H.* afterwards, to wit, on the ſaid 9th day of *January* in the —— year of, *&c.* at the pariſh of *D.* aforeſaid, in conſideration that the ſaid *W.* at the inſtance

inſtance and requeſt of the ſaid *A.* would conſent and agree to prevent and obſtruct the making and writing the ſaid deed ſo as aforeſaid appointed to be written by the ſaid *H.* undertook, and then and there faithfully promiſed the ſaid *W.* that he the ſaid *A.* would pay to the ſaid *W.* other 20*l.* of lawful money of *England*, when after the death of the ſaid *H.* he ſhould be thereunto requeſted. *And* the ſaid *W.* further in fact ſaith, that he the ſaid *W.* truſting to the ſaid promiſe and undertaking of the ſaid *A.* prevented and obſtructed the writing and making the ſaid deed, to wit, at the pariſh of *D.* aforeſaid; and afterwards, to wit, on the ſaid 15th day of *January* in the —— year of, *&c.* aforeſaid, the ſaid *H.* died at the ſaid pariſh of *D.* without iſſue of his body begotten, whereby the ſaid cloſe deſcended to the ſaid *A.* as brother and heir of the ſaid *H.* *Yet* the ſaid *A.* no ways regarding his ſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W.* in the premiſſes, hath not paid the ſaid ſeveral ſums, which amount in the whole to the ſum of 40*l.* or any part thereof, to the ſaid *W.* (altho' after the death of the ſaid *H.* to wit, on the —— day of, *&c.* in the —— year, *&c.* and often afterwards, at, *&c.* the ſaid *A.* was thereunto requeſted by the ſaid *W.*) but he hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame. Wherefore he ſaith

Declaration in caſe Sur aſſ. *on a promiſe of marriage* C. B.

he is injured, and hath damage to the value of 40*l.* And thereof he bringeth ſuit, *&c.* ——, to wit, *J. R.* late of, *&c.* was attached to anſwer *P. P.* ſpinſter, of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *P.* by *J. S.* her attorney complaineth, wherefore *whereas* on the 25th day of *March* in the 28th year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. at the caſtle of *York* a certain diſcourſe was moved and had between the ſaid *P.* and *W. P.* her father, and the ſaid *J.* and *R. R.* his father, of a marriage to be had and ſolemnized between the ſaid *P.* and the ſaid *J.* and upon that diſcourſe it was then and there agreed between all the ſaid parties, that the ſaid marriage ſhould be had and ſolemnized upon the *Sunday* next after the feaſt of *Eaſter*, being the ſecond day of *April* next enſuing, [other agreements between the fathers for portions, *&c.* ſet forth] the ſaid *J.* after the ſaid agreement ſo made, to wit, on the ſaid 25th day of *March* in the year aforeſaid, at the caſtle of *York* aforeſaid, in conſideration thereof, and alſo in conſideration that the ſaid *P.* at the ſpecial inſtance and requeſt of the ſaid *J.* had then and there undertook, and faithfully promiſed the ſaid *J.* that ſhe the ſaid *P.* would take the ſaid *J.* for her huſband, according to the ſaid agreement, undertook, and then and there faithfully promiſed the ſaid *P.* that he the ſaid *J.* would marry the ſaid *P.* according to the ſaid agreement. And the ſaid *P.* in fact

ſaith,

faith, that ſhe and the ſaid *W.* her father were always ready and often offered to perform the ſaid agreement in all things on their and each of their parts to be performed, according to the form and effect of the ſaid agreement. *And alſo whereas* the ſaid *J.* on the 3d day of *April* in the 28th year aforeſaid, at the ſaid caſtle of *Y.* in conſideration that the ſaid *P.* then and ſtill being unmarried, at the ſpecial inſtance and requeſt of the ſaid *J.* being then alſo unmarried, had then and there agreed with the ſaid *J.* and undertook and faithfully promiſed the ſaid *J.* that ſhe the ſaid *P.* would take the ſaid *J.* for her huſband, undertook, and then and there faithfully promiſed the ſaid *P.* that he the ſaid *J.* would marry the ſaid *P.* *Neverthe-leſs* the ſaid *J.* no ways regarding his ſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *P.* in the premiſes, did not marry the ſaid *P.* (altho' on the 11th day of *April* in the 28th year aforeſaid, and often before and afterwards, at the caſtle of *Y.* aforeſaid, he was thereunto requeſted by the ſaid *P.*) but the ſaid *J.* afterwards, to wit, on the 2d day of *December* in the 28th year aforeſaid, at the caſtle of *Y.* aforeſaid, married one *A. L.* [an *Indeb. aſſumpſit* for money lent, and an *Indeb. aſſumpſit* for money laid out.]

Laid over again.

Breach.

Other counts.

And the ſaid *J.* by *L. R.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *P.* ought not to have her ſaid action thereupon againſt him,

Plea.

As to firſt count, offered to marry plaintiff, but ſhe refuſed.

him, becauſe as to the firſt promiſe in the ſaid declaration above ſuppoſed to be made, he ſaith, that after the time of the ſaid promiſe and undertaking, and before the day of ſuing out the original writ of the ſaid *P.* to wit, on the 30th day of *March* in the ſaid 28th year of the reign of our ſaid lord the preſent king, at the caſtle of *Y.* aforeſaid, he the ſaid *J.* requeſted the ſaid *P.* that ſhe would be ready to take the ſaid *J.* for her huſband, according to the form and effect of the ſaid agreement; but the ſaid *P.* then and there intirely refuſed to do the ſame, and ſhe was not ready to marry the ſaid *J.* on the ſaid 2d day of *April* in the ſaid declaration mentioned: *Without this,* that the ſaid *J.* refuſed to marry the ſaid *P.* according to the ſaid agreement, as the ſaid *P.* has above declared againſt him; And this he is ready to verify. *And* as to the ſecond promiſe in the ſaid declaration above ſuppoſed to be made, he ſaith, that after the time of the ſaid promiſe and undertaking, and before the day of ſuing out the original writ of the ſaid *P.* to wit, on the 10th day of *April* in the 28th year aforeſaid, at the caſtle of *Y.* aforeſaid, and often afterwards there, the ſaid *J.* was ready and offered to the ſaid *P.* to marry the ſaid *P.* but the ſaid *P.* then and there abſolutely refuſed and denied to agree or conſent thereto, and refuſed to take the ſaid *J.* for her huſband: And this he is ready to verify. *And* as to the ſaid promiſe for the ſaid 30 *l.* above ſuppoſed to be made, the ſaid *J.* ſaith, that he did

Traverſe.

To the ſecond count, the like.

As to the third count, Non aſſumpſit.

did not undertake, in manner and form as the ſaid *P.* has thereupon above declared againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *P.* doth ſo likewiſe. *Iſſue.* *And* as to 10*l.* parcel of the ſaid 20*l.* in the ſaid declaration mentioned, the ſaid *J.* ſaith that he did not undertake in manner and form as the ſaid *P.* hath above declared againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *P.* does ſo likewiſe. *As to the fourth,* Non aſſumpſit *as to part.* *And* as to 10*l.* reſidue of the ſaid 20*l.* the ſaid *J.* ſaith that the ſaid *P.* ought not to have her ſaid action thereupon againſt him, becauſe he ſaith, that after the time of the promiſe for the ſaid 20*l.* above ſuppoſed to be made, and before the ſuing out the ſaid original writ of the ſaid *P.* to wit, on the 10th day of *February* in the 29th year of the reign of our Lord the preſent king, at the caſtle of *Y.* aforeſaid, the ſaid *J.* offered to the ſaid *P.* the ſaid 10*l.* reſidue of the ſaid 20*l.* which ſaid 10*l.* the ſaid *P.* intirely refuſed to receive: And the ſaid *J.* further ſaith, that he at all times afterwards hitherto was and ſtill is ready to pay to the ſaid *P.* the ſaid 10*l.* and hath brought the ſame here into court ready to be paid to the ſaid *P.* if ſhe the ſaid *P.* is willing to receive the ſame; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *P.* ought to have her ſaid action thereupon againſt him, *&c.* *Iſſue.* *As to the reſidue, a tender.*

And the ſaid *P.* as to the ſaid plea of the ſaid *J.* as to his ſecond promiſe and undertaking above pleaded in bar, ſaith, that by *Replication as to the ſecond plea, did not offer to marry her.*

any thing therein contained ſhe ought not to be barred from having her ſaid action againſt the ſaid *J.* becauſe ſhe ſaith that the ſaid *J.* after the time of the ſaid promiſe and undertaking made, did not offer to the ſaid *P.* to marry the ſaid *P.* in manner as he in pleading hath above alledged; And this ſhe prayeth may be inquired of by the country: *And* the ſaid *J.* doth ſo likewiſe, *&c.* *And* as to the ſaid plea of the ſaid *J.* above pleaded in bar to his ſaid firſt promiſe and undertaking, the ſaid *P.* ſaith, that the ſaid plea and the matter therein contained are not ſufficient in law to bar the ſaid *P.* from having her ſaid action againſt him; and that ſhe hath no need, and is not by the law of the land bound to anſwer to the ſaid plea in manner and form aforeſaid pleaded. *And* for cauſe of demurring in law upon the ſaid plea, the ſaid *P.* according to the form of the ſtatute in ſuch caſe made and provided, ſheweth to the court here the cauſe following, to wit, that the traverſe in the ſaid plea contained is immaterial and ſuperfluous, and thereby a matter not traverſable, which is not alledged in the ſaid declaration, is traverſed; And this ſhe is ready to verify: Wherefore for default of a ſufficient plea of the ſaid *J.* in this behalf, the ſaid *P.* prayeth judgment, and her damages by occaſion of the not performing the ſaid promiſe and undertaking, to be adjudged to her. *And* as to the ſaid plea of the ſaid *J.* as to the ſaid 10*l.* parcel of the ſaid 20*l.* in the ſaid declaration mentioned, ſuppoſed as aforeſaid to be

Iſſue.

A demurrer to the firſt plea.

Cauſe of demurrer.

Replication as to the tender, Eſtoppel that it was pleaded after imparlance.

be tendered by the ſaid *J.* the ſaid *P.* ſaith that the ſaid *J.* ought not to be admitted to ſay that he was at all times hitherto ready to pay the ſaid 10 *l.* to the ſaid *P.* becauſe ſhe ſaith, that ſhe the ſaid *P.* heretofore, to wit, in *Eaſter* term laſt paſt, in the court here declared in the plea aforeſaid againſt the ſaid *J.* in manner and form aforeſaid: And thereupon the ſaid *J.* in the ſame *Eaſter* term, by his ſaid attorney came and defended the force and injury when, *&c.* and ſaving to himſelf all and all manner of advantages, exceptions and allegations whatſoever, as well to the ſaid writ as to the ſaid declaration, prayed leave thereupon to imparl here until on this day, to wit, on the morrow of the *Holy Trinity* thence next enſuing, and had it, *&c.* The ſame day was given to the ſaid *P.* here, *&c.* as it ſufficiently appears of record in the ſaid court of our ſaid lord the king here; And this ſhe is ready to verify by the ſaid record: Wherefore ſhe prayeth judgment, if the ſaid *J.* ought to be admitted to ſay that he was at all times hitherto ready to pay the ſaid 10 *l.* to the ſaid *P.* *&c.*

And the ſaid *J.* for that he hath above pleaded ſufficient matter to bar the ſaid *P.* from having her ſaid action againſt him as to the firſt promiſe in the ſaid declaration above-mentioned, which he is ready to verify, which ſaid matter the ſaid *P.* doth not deny, and hath not any ways anſwered the ſame, prayeth judgment, and that the ſaid *P.* may be barred from having her ſaid ac- *Joinder in demurrer.*

tion as to the ſaid promiſe againſt him, &c. *And* further, the ſaid *J.* for that he hath above alledged ſufficient matter in law to bar the ſaid *P.* from having her ſaid action againſt him for the ſaid 10 *l.* reſidue of the ſaid 20 *l.* in the ſaid declaration ſpecified, and is ready to verify the ſame, which ſaid matter the ſaid *P.* doth not deny, and hath not any ways anſwered thereto, but intirely refuſeth to admit the verifying the ſame, prayeth judgment, and that the ſaid *P.* may be barred from having her ſaid action againſt him for the ſaid 10 *l.* &c.

Declaration by an adminiſtratrix in caſe Sur aſſ. *to pay coſts in chancery, in conſideration that the inteſtate forbore to proſecute contempts, and gave day of payment.* C. B.

Yorkſhire, to wit, *J. C.* late of, &c. was attached to anſwer *J. P.* adminiſtratrix of all and ſingular the goods and chattels which were of *W. P.* Gent. at the time of his death, *who died inteſtate*, of a plea of treſpaſs on the caſe, &c. And whereupon the ſaid *J.* by *A. M.* her attorney complaineth, that *whereas* the ſaid *J.* in the life-time of the ſaid *W.* to wit, on the —— day of, &c. intending to exhibit his bill of complaint in the high court of Chancery of our lord the preſent king againſt the ſaid *W.* ſued out of the ſaid court of Chancery, the ſaid court then being at *W.* in the county of *M.* a certain writ of our ſaid lord the king of *Subpœna*, directed to the ſaid *W.* by which ſaid writ our ſaid lord the king commanded the ſaid *W.* that the ſaid *W.* under the penalty of 100 *l.* ſhould be in the ſaid court of Chancery on the —— day of, &c. next enſuing, to anſwer to thoſe things which then and there ſhould be objected againſt him the

ſaid

ſaid *W.* Which ſaid writ afterwards, and before the return thereof, to wit, on the —— day of, *&c.* at, *&c.* the ſaid *J.* cauſed to be delivered to the ſaid *W.* and the ſaid *W.* at the return of the ſaid writ appeared in the ſaid court of Chancery, according to the command of the ſaid writ: And afterwards ſuch proceedings were in the ſame court, that 23 *l.* were adjudged by the ſaid court of Chancery to the ſaid *W.* againſt the ſaid *J.* for his coſts, charges and expences, by reaſon and occaſion of the unjuſt vexation of the ſaid *J.* had and ſuſtained by the ſaid *W.* in the ſaid court, as by the records and memorandums of the ſame, remaining at *W.* in the county of *M.* more fully appeareth. For obtaining which ſaid 23 *l.* the ſaid *W.* afterwards, to wit, on the —— day of, *&c.* ſued forth out of the ſame court of Chancery, the ſaid court then being at *W.* in the county of *M.* aforeſaid, a certain writ of our ſaid lord the king of *Subpæna* directed to the ſaid *J.* by which ſaid writ our ſaid lord the king firmly injoining, commanded the ſaid *J.* that he the ſaid *J.* immediately after the receipt of the ſaid writ, ſhould pay, or cauſe to be paid to the ſaid *W.* or to the bearer of the ſaid writ, the ſaid 23 *l.* and that the ſaid *J.* ſhould in no wiſe omit this, under the penalty of 100 *l.* Which ſaid writ of *Subpæna* laſt mentioned, the ſaid *W.* afterwards, to wit, on the —— day of, *&c.* delivered to *A. B.* then and ſtill one of the attornies of our lord the king of the bench here, and then the ſaid *W.*'s ſolicitor

in the ſaid ſuit in Chancery, to the intent that the ſaid *A. B.* ſhould demand and receive of the ſaid *J.* the ſaid 23 *l.* to the uſe of the ſaid *W.* And afterwards the ſaid *A.* in the life-time of the ſaid *W.* to wit, on the ſame day and year laſt aforeſaid, at, *&c.* ſhewed to the ſaid *J.* the ſaid laſt mentioned writ of *Subpœna*, directed to the ſaid *J.* as aforeſaid, and then and there demanded of the ſaid *J.* the ſaid 23 *l.* according to the tenor of the ſaid writ. *And* thereupon the ſaid *J.* on the ſame day and year, at, *&c.* in conſideration that the ſaid *A.* at the ſpecial inſtance and requeſt of the ſaid *J.* would ſtay one week for the ſaid 23 *l.* and would not ſue forth any writ of attachment out of the ſaid court of Chancery againſt the ſaid *J.* for not paying the ſaid 23 *l.* upon the demand aforeſaid, undertook, and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *J.* would well and truly pay the ſaid 23 *l.* to the ſaid *W.* when he the ſaid *J.* after the end of the ſaid week then next enſuing ſhould be thereunto requeſted. *And* the ſaid *J.* in fact ſaith, that the ſaid *W.* and *A. B.* truſting to the ſaid promiſe and undertaking of the ſaid *J.* did ſtay one week from thence next enſuing for the ſaid 23*l.* and did not ſue forth, nor did either of them ſue forth at any time any writ of attachment againſt the ſaid *J.* for or concerning the ſaid 23 *l.* or the non-payment thereof: [*Indeb. aſſ.* for 20*l.*] *Yet* the ſaid *J.* not regarding his ſeveral promiſes and undertakings aforeſaid, but contriving and fraudulently intending

Aſſumpſit.

Averment, conſideration performed.

Breach.

ing

ing to deceive and defraud the ſaid *W.* in his life-time, and the ſaid *J.* after the death of the ſaid *W.* hath not paid the ſaid ſeveral ſums of money, amounting in the whole to, *&c.* either to the ſaid *W.* in his life-time, or to the ſaid *J.* after the death of the ſaid *W.* (to which *J.* adminiſtration of all and ſingular the goods and chattels, rights and credits which were of the ſaid *W.* at the time of his death, after the death of the ſaid *W.* to wit, on the —— day of, *&c.* at, *&c.* by, *&c.* was in due manner committed) but intirely refuſed to pay the ſame to the ſaid *W.* in his life-time, and to the ſaid *J.* after the death of the ſaid *W.* and ſtill refuſeth to pay the ſame to the ſaid *J.* altho' the ſaid *J.* was thereunto requeſted by the ſaid *W.* in his life-time, and by the ſaid *J.* after the death of the ſaid *W.* to wit, on the —— day of, *&c.* at, *&c.* Wherefore ſhe ſaith ſhe is injured, and hath damage to the value of 40 *l.* And thereof ſhe bringeth ſuit, *&c.* *And* ſhe bringeth here into court the ſaid letters of adminiſtration, which teſtify the committing the ſaid adminiſtration in form aforeſaid, *&c.*

Adminiſtration committed.

Profert.

—— to wit, *A. B.* late of, *&c.* was attached to anſwer *C. D.* of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *C. D.* by —— his attorney complaineth, wherefore *whereas* on the —— day of, *&c.* at, *&c.* a certain ſuit was moved and depending between the ſaid *A.* and *C.* concerning, *&c.* To compromiſe and determine which, as well the ſaid *A.* as the ſaid *C.*

Declaration in caſe Sur aſſumpſit *to perform an award.* C. B.

C. put themſelves upon the arbitration of *E. F.* and *G. H.* arbitrators indifferently choſen between them to award, order and adjudge of and concerning the ſaid ſuit, ſo that the award ſhould be given in by parol or in writing under the hands and ſeals of the ſaid *E.* and *G.* before the —— day of, *&c.* and if the ſaid arbitrators ſhould refuſe or omit to make any award, order or judgment concerning the premiſſes by the time aforeſaid, then upon the arbitration of *J. K.* an umpire indifferently choſen and named by the ſaid *A.* and *C.* to award of and concerning the premiſſes, ſo that the umpirage ſhould be given by parol or in writing under the hand and ſeal of the ſaid *J. K.* before the —— day of, *&c.* *In conſideration whereof*, and in conſideration that the ſaid *C.* on the ſaid —— day of, *&c.* at, *&c.* aforeſaid, at the ſpecial inſtance and requeſt of the ſaid *A.* had undertaken and promiſed to the ſaid *A.* to pay to the ſaid *A.* 20 *l.* of lawful money of *England*, if he the ſaid *C.* ſhould not perform and fulfil the award of the ſaid arbitrators, or of the ſaid *J.* to be made of and upon the premiſſes in form aforeſaid, in all things on his part to be performed and fulfilled, the ſaid *A.* undertook, and on the ſaid —— day of, *&c.* at, *&c.* aforeſaid, faithfully promiſed the ſaid *C.* that if he the ſaid *A.* ſhould not perform the award or umpirage aforeſaid, to be made in form aforeſaid of and upon the premiſſes, in all things on his part to be performed and fulfilled, then he the ſaid *A.* would pay 20 *l.*

of

of lawful money of *England* to the ſaid *C.* when he ſhould be thereunto afterwards requeſted. *And* the ſaid *C.* in fact ſaith, that the ſaid arbitrators omitted to make any award of and upon the premiſſes before the ſaid —— day of, *&c.* and that the ſaid *J.* in default thereof, having taken upon him the burthen of the ſaid arbitrament, before the ſaid —— day of, *&c.* to wit, on the —— day of, *&c.* at, *&c.* awarded, ordered and adjudged of and upon the ſaid premiſſes in form following, to wit, that the ſaid *A.* ſhould pay 10 *l.* to the ſaid *C.* on the —— day of, *&c.* in full diſcharge of, *&c.* in or at the dwelling-houſe of one *L. M.* in *D.* aforeſaid. *And* the ſaid *C.* further in fact ſaith, that he the ſaid *C.* was ready on the ſaid —— day of, *&c.* at the dwelling houſe of the ſaid *L. M.* to receive the ſaid 10 *l.* according to the form and effect of the ſaid award; but the ſaid *A.* not regarding the ſaid award, did not pay the ſaid 10 *l.* to the ſaid *C.* on the ſaid —— day of, *&c.* or at any time afterwards; by reaſon whereof the ſaid *A.* ought to have paid the ſaid 20 *l.* to the ſaid *C.* according to his ſaid promiſe and undertaking: *Nevertheleſs* the ſaid *A.* no ways regarding his ſaid promiſe and undertaking, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *C.* in this caſe, hath not paid the ſaid 20 *l.* to the ſaid *C.* (altho' the ſaid *A.* afterwards, to wit, on the —— day of, *&c.* and often afterwards, at, *&c.* aforeſaid, was requeſted to pay the

ſame

ſame by the ſaid *C.*) but he hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore he ſays he is injured, and has damage to the value of 30*l.* And thereof he bringeth ſuit, *&c.*

Declaration in caſe, for erecting a furnace and chimney near the plaintiff's houſe. B. R.

Middleſex, to wit, *M. K.* Eſq; complaineth of *J. W.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf; *For that whereas* the ſaid *M.* on the 16th day of *September* in the year of our lord 1741. and for a long time before, and continually ſince hitherto, was and yet is poſſeſſed of a certain meſſuage with the appurtenances, ſituate in the pariſh of *St. James* in the liberty of *W.* and county of *M.* in which ſaid meſuage the ſaid *M.* with his family, during the whole time aforeſaid, hath reſided and doth ſtill reſide in the ſame: *Nevertheleſs* the ſaid *J.* nothing ignorant of the premiſſes, but contriving and maliciouſly intending to injure the ſaid *M.* and to render the ſaid meſuage of the ſaid *M.* not fit for habitation, and to deprive and hinder the ſaid *M.* of the enjoyment, uſe and profit of his ſaid meſuage, whilſt the ſaid *M.* was poſſeſſed of the ſaid meſuage, and with his family reſided in the ſame, that is to ſay, the ſaid 16th day of *September* in the ſaid year of our Lord 1741. newly erected and made a certain furnace and chimney at the ſaid pariſh near to the ſaid meſuage: *And* afterwards, that is to ſay, on the ſaid 16th day of *September* in the ſaid year of our Lord 1741. and on ſeveral other days and times between that day and the

16th

16th day of *April* in the year of our Lord 1742. the ſaid *J.* cauſed great quantities of ſeacoal and other combuſtible matter to be burnt in the ſaid furnace ſo as aforeſaid newly erected, to wit, in the pariſh aforeſaid, in the liberty and county aforeſaid, and by reaſon thereof the ſmoak, aſhes and ſoot, in great abundance ariſing and iſſuing from the ſaid furnace and chimney ſo as aforeſaid erected, at the ſeveral times laſt mentioned entered and penetrated into the ſaid meſuage of the ſaid *M.* and ſpoiled and rendered of no value great part of the furniture of the ſaid *M.* ſtanding and being in his ſaid meſuage; and the air in the ſaid meſuage, at the ſeveral times laſt aforeſaid was rendered noiſome and unwholeſome, to the great annoyance and nuſance of the ſaid *M.* and his family reſiding in his ſaid meſuage, and divers windows of the ſaid meſuage of the ſaid *M.* were thereby during the time laſt mentioned covered with the ſaid ſoot, and were thereby blackened and obſcured, to the great hurt and nuſance of the ſaid *M.* *And where-* *Second count.*
as alſo the ſaid *M.* on the ſaid 16th day of *September* in the year of our Lord 1741. and during the whole time aforeſaid, being ſo as aforeſaid poſſeſſed of the ſaid meſuage with the appurtenances, ſituate in the pariſh of *St. James* in the liberty of *W.* and county of *M.* and with his family ſo reſiding in the ſame, the ſaid *J.* further contriving and maliciouſly intending to injure the ſaid *M.* and to render the ſaid meſuage of the ſaid *M.* not fit for habitation, and to deprive and hinder the

the ſaid *M.* of the enjoyment, uſe and profit of his ſaid meſſuage, whilſt the ſaid *M.* was poſſeſſed of the ſame meſuage, and with his family reſided in the ſame, that is to ſay, on the 20th day of *September* in the ſaid year of our Lord 1741. newly erected and built a certain other chimney at the pariſh aforeſaid, near to the ſaid meſuage; and afterwards, to wit, on the ſaid 20th day of *September* in the ſaid year of our Lord 1741. and on ſeveral other days and times between that day and the 16th day of *April* in the year of our Lord 1742. cauſed great quantities of ſea-coal and other combuſtible matter to be burnt in the ſaid laſt mentioned chimney ſo as aforeſaid newly built, to wit, in the pariſh aforeſaid, in the liberty and county aforeſaid; and by reaſon thereof the ſmoak, aſhes and ſoot, in great abundance ariſing and iſſuing from the ſaid laſt mentioned chimney ſo as aforeſaid erected, at the ſeveral times laſt mentioned entered and penetrated into the ſaid meſuage of the ſaid *M.* and ſpoiled and rendered of no value other part of the furniture of the ſaid *M.* ſtanding and being in his ſaid meſuage, and the air in the ſaid meſuage at thoſe times thereby was rendered noiſome and unwholeſome, to the farther annoyance and nuſance of the ſaid *M.* and his family reſiding in his ſaid meſuage, and divers other windows of the ſaid meſuage of the ſaid *M.* were thereby during the time laſt mentioned covered with the ſaid ſoot, and were thereby blackened and obſcured, to the great hurt and nuſance

of

of the ſaid *M.* Wherefore the ſaid *M.* ſays that he is injured, and hath ſuſtained damage to the value of 10*l.* And thereof he bringeth ſuit, *&c.* Pledges, *&c.*

Cornwal, to wit, *R. P.* late of, *&c.* was attached to anſwer *E. C.* of a plea of treſpaſs on the caſe: And *whereupon* the ſaid *E.* by *J. W.* his attorney complaineth, *that whereas* on the 1ſt day of *October* in the year of our Lord 1735. and always afterwards, he the ſaid *E.* was and ſtill is poſſeſſed of and in a certain antient meſuage with the appurtenances, ſituate, lying and being at *P.* aforeſaid in the county aforeſaid, in which ſaid meſuage now are, and for the whole time aforeſaid and before were certain windows on the weſt-part thereof, through which ſaid windows he the ſaid *E.* (until the obſtructions and damage hereafter mentioned) of right ought to have and enjoy the chearful light and wholeſome air which by and through the ſaid windows entered and were conveyed into the ſaid meſuage, and alſo the uſe of the ſaid meſuage, without any obſtruction, hindrance or damage, to the great benefit and advantage of him the ſaid *E.* *Yet* the ſaid *R.* not ignorant of the premiſſes, but contriving and fraudulently and maliciouſly intending in this behalf unlawfully to oppreſs him the ſaid *E.* and to ſpoil and deprive him of the uſe and benefit of his ſaid windows, and of his ſaid meſuage, the ſaid *R.* afterwards, to wit, the ſaid 1ſt day of *October* in the ſaid year of our Lord 1735. and from that day to the 21ſt day of *May*

Declaration in caſe, for building ſo near the plaintiff's windows as to deprive him of the light. C. B.

in the year of our Lord 1737. at *P.* aforeſaid in the county aforeſaid, certain walls and other buildings lately erected and built ſo near to the ſaid meſſuage, unlawfully and injuriouſly, and to the nuſance of the ſaid meſuage of the ſaid *E.* continued, that by reaſon thereof not only the ſaid windows of him the ſaid *E.* were greatly darkened, obſcured and obſtructed, but alſo the rain-waters deſcending from the ſaid buildings greatly damaged and ſpoiled the ſaid meſuage of the ſaid *E.* by which he the ſaid *E.* during all the time aforeſaid loſt and was deprived of the uſe and benefit of the light and air which would have entered and been conveyed into his ſaid meſuage by and thro' the windows aforeſaid, if the ſaid walls and buildings had not continued as aforeſaid, but alſo the benefit, uſe and advantage of his ſaid meſuage, to the damage of him the ſaid *E.* of 200 *l.* And thereof he bringeth this ſuit, *&c.*

Declaration in caſe for leaving open the door of a wine-vault, whereby plaintiff fell in, &c. B. R.

Middleſex, to wit, *E. R.* widow complaineth of *E. T.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, *for that whereas* ſhe the ſaid *E.* on the 20th day of *October* in the year of our Lord 1743. was, and from thenceforth hitherto hath been and yet is poſſeſſed of and in divers, to wit, two rooms with the appurtenances in the pariſh of *St. James* within the liberty of *W.* in the county of *M.* and over a certain great place or building there called the market-houſe, otherwiſe *St. James*'s market-houſe, and by reaſon

reaſon thereof ſhe the ſaid *E.* during all that time, of right ought to have had and to have a way from and out of a certain place in the ſaid pariſh called the butter-market, in and through a certain narrow entry belonging to the ſaid market, and from thence up certain ſtairs to the ſaid rooms of the ſaid *E.* and to and from thence back again to the ſaid place called the butter-market, to go, return and paſs every year, at all times of the year, at her will and pleaſure. *And whereas* the ſaid *E.* on the ſaid 20th day of *October* in the year aforeſaid, was, and from thence hitherto has been poſſeſſed of and in a certain wine-vault with the appurtenances, in the ſaid pariſh and county, near unto the ſaid place called the market-houſe, otherwiſe *St. James*'s market-houſe, the door-way and ſtairs of which ſaid wine-vault during all that time have been and ſtill are in the ſaid narrow entry: *Yet* the ſaid *E.* knowing the premiſſes, but contriving and intending to injure the ſaid *E.* whilſt ſhe the ſaid *E.* was ſo poſſeſſed of her ſaid rooms with the appurtenances, and whilſt the ſaid *E.* was ſo poſſeſſed of his ſaid wine-vault as aforeſaid, to wit, on the ſaid 20th day of *October* in the year aforeſaid, in the night-time of the ſaid day, wrongfully and injuriouſly kept and continued open, and wrongfully and injuriouſly cauſed, permitted and ſuffered to be kept and continued, the door of the ſaid wine-vault opening in the ſaid narrow entry, and the way going down the ſtairs of the ſaid wine-vault in the ſaid narrow entry open,

and wholly uncovered and unſtopped up, and without fixing or putting any light at or near the ſaid door or ſtairs, that the ſaid door or ſtairs might be ſeen to be ſo open; whereby the ſaid *E.* coming along the ſaid narrow entry, in her ſaid way from the ſaid place called the butter-market, up to the ſaid ſtairs leading to her ſaid rooms, and uſing her ſaid way there as ſhe might lawfully do whilſt the ſaid door and ſtairs were ſo kept and continued open as aforeſaid, on the ſame day and year, in the night-time of that day, through the ſaid door and ſtairs, being ſo open as aforeſaid, then and there with great force, unavoidably and againſt her will, fell down thro' the door and ſtair-way of the ſaid wine-vault into the ſaid wine-vault; whereby the ſaid *E.* by the ſaid fall was then and there ſo greatly wounded and bruiſed in her legs, thighs, arms, back, and divers other parts of her body, that not only the life of the ſaid *E.* was for a long time, to wit, for the ſpace of twelve weeks then next following thereby greatly deſpaired of, but the ſaid *E.* during that time was thereby prevented and hindered from following and exerciſing her lawful buſineſs and employment during all that time, and has been forced and obliged to lay out and expend divers large ſums of money, in the whole amounting to 50 *l.* in and about the healing and curing herſelf of the ſaid wounds and bruiſes, to the ſaid *E.* her damage of 80 *l.* And thereof ſhe bringeth her ſuit, *&c.*

J. L.

J. L. *for plaintiff,* and —— *for defendant,* } *Pledges to profecute* { J. D. and R. R.

—— to wit, *R. M.* late of, *&c.* was attached by the writ of our lord the king of privilege iſſuing out of the court here, to answer *T. P.* Gent. one of the attornies of the court of our lord the king of the bench, of a plea of treſpaſs on the caſe: And whereupon the ſaid *T.* in his proper perſon complaineth, that *whereas* in the town of *N. upon T.* aforeſaid there is, and from the time to the contrary whereof the memory of man is not to the contrary, hath been a certain antient ſtreet called the *Side*, which ſaid ſtreet is, and by the whole time aforeſaid hath been the king's highway for all ſubjects of our lord the preſent king and his predeceſſors, kings and queens of *England*, to go, paſs over and ride, in, by and through the ſaid ſtreet, at their will and pleaſure; *Yet* the ſaid *R.* not ignorant of the premiſſes, on the —— day of, *&c.* without any lawful warrant dug and made a trench in the ſaid ſtreet croſs great part of the ſaid ſtreet, and did not take care to fill and ſtop up the ſame with earth; whereby the ſaid *T.* being a ſubject of our ſaid lord the preſent king, afterwards, to wit, on the —— day of, *&c.* at the ſaid town of *Newcaſtle upon Tine*, in the night-time of the ſame day, not knowing of the ſaid trench, riding upon his horſe in and thro' the ſaid ſtreet, fell with his horſe into the ſaid trench, and thereby the leg of the

Declaration in caſe at the ſuit of an attorney, for digging a trench in a ſtreet, wherein plaintiff fell and broke his leg. C. B.

ſaid *T.* was broken, and the ſaid *T.* was greatly hurt and bruiſed; and alſo his ſaid horſe was greatly injured, to the damage of the ſaid *T.* of 500 *l.* And thereof he bringeth ſuit, *&c.*

Declaration in caſe by an executor durante minoritate, *for procuring* R. H. *who was indebted to the plaintiff's teſtator, to confeſs a fraudulent judgment, whereby plaintiff was defeated of recovering the debt. By original in* B. R. Carth. 3. S. C. Comb. 51. *Plaintiff's teſtator recovered a judgment againſt* R. H. *for* 101 l. 10 s.

Middleſex, to wit, *B. T.* late of the *Middle Temple*, *London*, Eſq; was attached to anſwer *T. S.* Gent. executor of the teſtament and laſt will of *R. S.* Eſq; deceaſed, during the minority of *R. S.* ſon of the ſaid *R. S.* Eſq; deceaſed, of a plea of treſpaſs upon the caſe: And whereupon the ſaid *T. S.* by *R. G.* his attorney complaineth, wherefore *whereas* the ſaid *R. S.* in his life-time heretofore, that is to ſay, in the term of St. *Michael* in the 29th year of the reign of the lord *Charles* II. late king of *England*, &c. in the court of the ſaid late king, before the king himſelf, (the ſaid court being at *W.* in the county of *M.* aforeſaid) by the conſideration of the ſaid court had recovered againſt one *R. H.* a certain debt of 100 *l.* and alſo 30 *s.* for his damages, which he had ſuſtained by occaſion of the detaining that debt whereof he was convicted, as by the record thereof now remaining in the court of our lord the king at *W.* aforeſaid, in full force and vigour, no ways reverſed, annulled, or in any manner ſatisfied, more fully appeareth. *And whereas alſo* the ſaid debt and damages being no ways paid or ſatisfied, and the ſaid *R. H.* being further indebted to the ſaid *R. S.* in the ſum of 108 *l.* of lawful money of *England*, for the rent of a certain meſuage with the appurtenances, ſituate in the

R. H. *alſo indebted to teſtator in* 108 l. *for rent.*

parish

pariſh of *St. Martin's in the Fields* in the ſaid county of *M.* then held by the ſaid *R. H.* of the ſaid *R. S.* for a certain term of years then unexpired, the ſaid *R. S.* made his teſtament and laſt will in writing, and of the ſaid teſtament conſtituted the ſaid *T.* executor, and afterwards died; and the ſaid *T.* in due form of law proved the ſaid teſtament, and took upon him the burthen of the execution thereof. *And whereas* after the death of the ſaid *R. S.* that is to ſay, in the term of *Eaſter* in the 32d year of the reign of the ſaid lord the late king, in the ſaid court of the ſaid late king, before the king himſelf here, that is to ſay, at *W.* aforeſaid, it was conſidered by the ſame court, that he the ſaid *T.* executor, ſhould have his execution againſt the ſaid *R. H.* for the debt and damages aforeſaid, according to the force, form and effect of the ſaid recovery, as by the record thereof remaining in the ſame court more fully appears. *And whereas alſo* at the ſaid time of adjudging that execution, the ſaid *R.* was poſſeſſed of and in divers goods and chattels to the value of 200 *l.* then being in the ſaid meſuage, as of his own proper goods and chattels; *And* the ſaid *T.* intended to ſue out a writ of *Fi. Fa.* upon the ſaid judgment to the ſheriff of *Middleſex* aforeſaid, to cauſe the ſaid debt and damages to be made of the ſaid goods and chattels, and alſo to proſecute at law the ſaid *R. H.* for the ſaid rent as aforeſaid due and then being in arrear; *The* ſaid *B.* well knowing the premiſſes, and maliciouſly contriving, and with the ſaid *R. H.* conſpiring

Teſtator made his will, appointed plaintiff executor, and died.

Judgment for plaintiff on a Sci. Fa. *brought on the ſaid judgment.*

R. H. *poſſeſſed of divers goods and chattels.*

Plaintiff intended to ſue out a Fi. Fa. *and alſo to ſue for the rent.*

Defendant fraudulently cauſed a judgment to be ſigned againſt

the ſaid R. H. *at the ſuit of* M. W.

to deprive the ſaid *T.* of his ſaid ſeveral debts, to obtain the ſaid goods and chattels to the proper uſe of the ſaid *B.* the ſaid *B.* afterwards unduly and fraudulently cauſed and procured a certain judgment to be ſigned in the ſaid court of the ſaid late king, before the king himſelf, againſt the ſaid *R. H.* for 160 *l.* of debt, at the ſuit of one *M. W.* and to be inrolled of record as of the term of the *Holy Trinity* in the 32d year aforeſaid; *When* in truth and in fact the ſaid *R. H.* was not indebted to the ſaid *M.* in the ſaid 160 *l.* or any part thereof: *And* the ſaid *B.* by pretext of a certain writ of the ſaid late king of execution upon the ſaid judgment, proſecuted out of the ſaid court, and directed to the ſheriff of the county of *M.* aforeſaid, on the 18th day of *June* in the year of our Lord 1680. the ſaid goods and chattels of the ſaid *R. H.* out of the ſaid meſuage to be amoved, and to the ſaid *B.* to be delivered, then and there fraudulently cauſed and procured, and the ſaid goods and chattels to places unknown to the ſaid *T.* carried away, conveyed and converted to his own uſe: *And* the ſaid *R. H.* to places to the ſaid *T.* alſo unknown, has alſo eſcaped, and by any proceſs of law from that time hitherto cannot be taken and arreſted; *Whereby* the ſaid *T.* hath wholly loſt not only ſeveral ſums of money expended by him in ſuing for the ſaid debts, but alſo the ſaid ſeveral debts, to the damage of the ſaid *T.* of 500 *l.* And thereof he bringeth ſuit, *&c.*

when nothing due to him.

And the goods of R. H. *to be taken in execution and delivered to defendant.*

R. H. *abſconds, and cannot be arreſted.*

Whereby has loſt his ſaid debts, &c.

Demurrer.

And the ſaid *B.* by *B. K.* his attorney cometh and defendeth the force and injury when,

when, &c. and ſaith, that the matter contained in the ſaid writ and declaration are not ſufficient in law for the ſaid *T.* to have maintained his ſaid action againſt the ſaid *B.* To which ſaid matter the ſaid *B.* hath no need, nor is he bound by the law of the land to anſwer; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T.* ought to maintain any action againſt the ſaid *B.* in this caſe, &c.

And the ſaid *T. S.* for that he hath above declared ſufficient matter in law to maintain his ſaid action againſt the ſaid *B. T.* which he is ready to verify, which ſaid matter the ſaid *B.* doth not deny, nor in any manner anſwer thereto, but wholly refuſeth to admit the verification thereof, prayeth judgment, and his damages by the occaſion aforeſaid, to be adjudged to him, &c. *But becauſe* the court of our ſaid lord the king now here is not yet adviſed of giving their judgment of and upon the premiſſes, day is thereupon given to the parties aforeſaid, before our lord the king, from the day whereſoever, &c. to hear their judgment of and upon the premiſſes, for that the court of our ſaid lord the king now here is not yet, &c. *Joinder.* Cur. adviſar. &c.

Judgment given for the plaintiff, and affirmed in parliament.

Middleſex, to wit, *T. B.* late of, &c. was attached to anſwer the right honorable *E.* lord *G.* baron of ——, one of the peers and great men of this realm, who ſueth as well for our lord the king as for himſelf, in a plea *Declaration in caſe* Sur le Stat. de Scand. Mag. C. B.

plea of treſpaſs upon the caſe, &c. *And* thereupon the ſaid lord *G.* who as well, &c. by *H. H.* his attorney complaineth, that *whereas* the ſaid lord *G.* on the 29th day of *October* in the 9th year of the reign of our ſaid lord the king, and long before, was, and ever ſince hath been, and yet is one of the barons and peers of this realm, and for all the time aforeſaid hath had and yet hath a ſeat and vote in the parliament of *Great Britain*, as one of the peers of this realm: Nevertheleſs the aforeſaid *T.* contriving and maliciouſly deſigning, againſt the form of the ſtatute in that caſe made and provided, to raiſe great ſcandal of and concerning the ſaid lord *G.* whereby diſcords might ariſe between the ſaid *G.* and other peers, and great men and other ſubjects of this realm, and to hurt, injure and impair the good name, credit, ſtate, dignity and honour of the ſaid lord *G.* on the ſaid 29th day of *October* in the 9th year aforeſaid, at *W.* in the ſaid county of *M.* in a certain diſcourſe which he the ſaid *T.* then and there had of and concerning the ſaid lord *G.* in the preſence and hearing of divers of his majeſty's faithful ſubjects, falſely and maliciouſly ſpoke, related, publiſhed, and with a loud voice declared of and concerning the ſaid lord *G.* theſe falſe, ſcandalous and defamatory words here next following, that is to ſay, *He* (meaning the ſaid lord *G.*) *is a worthleſs fellow, and a little great lord, and his word* (meaning the word of the ſaid lord *G.*) *is not worth two pence: He* (meaning again the ſaid lord

G.)

G.) has honour, but uſes none. And the ſaid *T.* out of his further malice contriving and maliciouſly deſigning, againſt the form of the ſaid ſtatute, to raiſe a great ſcandal of and concerning the ſaid lord *G.* whereby diſcords might ariſe between the ſaid lord *G.* and other peers and great men, and other ſubjects of this realm, and to hurt, injure and impair the good name, credit, ſtate, dignity and honour of the ſaid lord *G.* afterwards, that is to ſay, on the 23d day of *March* in the 9th year aforeſaid, at *W.* aforeſaid, in another diſcourſe which he the ſaid *T.* then and there had with one *T. C.* of and concerning the ſaid lord *G.* in the preſence and hearing of divers other of his majeſty's faithful ſubjects, falſely and maliciouſly ſpoke, related, publiſhed, and with a loud voice declared of and concerning the ſaid lord *G.* the falſe, ſcandalous and defamatory words here next following, that is to ſay, *He*, &c. *And* alſo the further falſe, ſcandalous and defamatory words here next following, *It is true*, &c. By reaſon of the ſpeaking, relating, publiſhing and declaring of which ſaid ſeveral falſe, ſcandalous and defamatory words, the ſaid *L. G.* is hurt in his reputation, honour and dignity; and the ſaid lord *G.* hath loſt the grace, good opinion and eſtimation of his preſent majeſty, and the peers of this realm; and divers rumours and ſcandals amongſt the peers of this realm, by the occaſion aforeſaid, are raiſed and divulged, and diſcords thereupon by the occaſion aforeſaid are riſen between the ſaid

lord

lord *G.* and the peers and great men, and other ſubjects of this realm, and daily more and more are likely to ariſe, to the great diſturbance of the publick tranquillity of this realm, in contempt of his preſent majeſty, and to the great ſcandal and detriment of the ſaid lord *G.* and againſt the form of the ſtatute, to the damage of the ſaid lord *G.* who as well, *&c.* of 5000 *l.* And thereof the ſaid lord *G.* as well for our ſaid lord the king as for himſelf bringeth this ſuit, *&c.*

Declaration in caſe for ſlanderous words ſpoken of a tradeſman, charging the defendant with theft; ſpecial damage laid. C. B.

Middleſex, to wit, *J. C.* late of, *&c.* was attached to anſwer to *F. D.* in a plea of treſpaſs upon the caſe, *&c.* *And* whereupon the ſaid *F.* by *S. N.* his attorney complaineth, *That whereas* he the ſaid *F.* is a good, true, pious, faithful and honeſt ſubject of this kingdom, and as a good, true, pious, faithful and honeſt ſubject of this kingdom, from the time of his nativity hitherto hath demeaned and behaved himſelf, and until the time of the ſpeaking of the falſe and ſcandalous words firſt hereafter mentioned to have been ſpoken by the ſaid *J.* was accounted, eſteemed and reputed a perſon of good name, fame, condition, converſation and reputation, and as a faithful and honeſt ſubject of this kingdom he the ſaid *F. D.* always kept himſelf free and clear from theft, robbery, and all ſuch enormous crimes; and by reaſon of his ſaid good name, fame, condition, converſation and reputation, the ſaid *F. D.* had obtained the love and good will of all his neighbours, and other faithful and honeſt ſubjects of this kingdom:

kingdom: *And whereas* he the ſaid *F.* now uſeth and exerciſeth, and for divers years now laſt paſt has uſed and exerciſed the trade of a carpenter, and thereby and by reaſon of his good name, credit and reputation therein, hath during the time aforeſaid got and endeavoured to get his livelihood in ſupport of himſelf and family: *Neverthelefs* the ſaid *J.* well knowing the premiſes, but contriving and maliciouſly intending to deprive him the ſaid *F.* of his good name, fame, credit, eſteem and reputation aforeſaid, and to bring him into ſcandal, reproach and diſpleaſure, as well amongſt all grave and venerable perſons, as other faithful and honeſt ſubjects of this kingdom, and eſpecially among his friends and cuſtomers, and to hinder him in the exerciſe of his ſaid trade, and alſo to cauſe the ſaid *F. D.* to be puniſhed according to the laws and ſtatutes of this kingdom made and provided againſt thoſe who commit felonies and robberies, on the 11th day of *January* in the year of our Lord 1734. at *Uxbridge* in the ſaid county, in a certain diſcourſe which the ſaid *J.* then and there had with divers ſubjects of this kingdom, of and concerning the ſaid *F.* did falſely and maliciouſly, in the preſence and hearing of thoſe ſubjects, ſpeak and utter of and concerning the ſaid *F.* certain falſe, ſcandalous and defamatory words, to wit, *He* (meaning the ſaid *T. D.*) *has broke open my brother* T.'s *ſcrutore, and robbed him* (meaning *T. C.* brother of him the ſaid *J.* *of* 27 *guineas and ſome half-pence. And* the ſaid

J.

J. of his further malice prepenſed againſt the ſaid *F.* afterwards, to wit, on the ſame day and year, at *U.* aforeſaid, in a certain other diſcourſe which the ſaid *J.* then and there had with divers other ſubjects of this kingdom, of and concerning the ſaid *F.* did falſely and maliciouſly, in the preſence and hearing of thoſe ſubjects, ſpeak and utter of and concerning the ſaid *F. D.* certain other falſe, ſcandalous and defamatory words, to wit, *The rogue* (meaning the ſaid *F.*) *has robbed my houſe*, (meaning the dwelling-houſe of the ſaid *J.*) *and broke open my brother's ſcrutore, and has took ſome money from him*, (meaning the aforeſaid *T. C.* the ſaid *J.*'s brother) *and I* (meaning again the ſaid *J.*) *will ſwear it:* Whereas in truth the ſaid *F.* is not guilty of any offence by the ſaid ſeveral ſcandalous words laid to his charge. By reaſon of which ſpeaking of the ſaid ſeveral falſe, ſcandalous and defamatory words, the ſaid *F.* is greatly ſcandalized, hurt and injured in his good name, fame, credit, eſteem and reputation aforeſaid, and is greatly hurt and damnified in his ſaid buſineſs, inſomuch that divers perſons, to wit, *G. W.* and *J. G.* who were uſed and accuſtomed to employ the ſaid *F.* in his ſaid trade and buſineſs of a carpenter, by reaſon of ſpeaking the ſaid words, ſuſpect him to be guilty of the crimes thereby laid to his charge, and have refuſed, and ſtill do more and more refuſe to employ him in his ſaid buſineſs, or to have any dealings or concerns whatſoever with him; and the ſaid *F.* is very much prejudiced and hindered in

Special damage laid.

in the exercise of his said trade, to the damage of the said *F.* 500*l.* And thereof he bringeth suit, *&c.*

Declaration in case for scandalous words spoken of an attorney, charging him with perjury. C. B.

Leicester, to wit, *W. S.* late of *W.* in the county aforesaid, yeoman, was attached by the writ of our lord the king of privilege, issuing out of the court here, to answer *T. B.* Gent. one of the attornies of the court of our lord the king of the bench here, of a plea of trespass upon the case, *&c.* And whereupon the said *T.* in his proper person complaineth, wherefore *whereas* the said *T.* is a good, true and faithful subject of our lord the present king, and of good name, fame and condition, and from the time of his birth hitherto has behaved and demeaned himself as a good, true and faithful subject of our lord the present king, and for all that time has remained without any kind of falsity, perjury, or stain of any hurtful crime: And also whereas the said *T.* for divers years now last past, was and still is one of the attornies of the court of our lord the present king of the bench here, and has hitherto behaved and demeaned himself rightly and honestly according to his ability and skill in all causes of his clients, whose attorney the said *T.* has been in the said court here, and by reason of the faithful and honest exercise of his office of an attorney in the same court of the bench, and prosecuting the causes of his clients, justly and honestly, gained and acquired many fees and much profit for the support and maintenance of himself and his family, and was daily likely to gain more

and

and more: *Nevertheleſs* the ſaid *W.* not ignorant of the premiſſes, but contriving and maliciouſly intending unjuſtly to injure the ſaid *T.* and to hurt, take away and injure his good name, fame, credit and eſteem, and to bring the ſaid *T.* into ignominy and infamy, as well amongſt his neighbours as amongſt all his clients, and to deprive the ſaid *T.* of his gain and profit which he might afterwards gain by reaſon of the honeſt exerciſe of his office of an attorney, on the 20th day of *February* in the 30th year of the reign of our ſaid lord the preſent king, at the borough of *L.* having communication and diſcourſe with divers ſubjects of our ſaid lord the king, concerning the ſaid *T.* and the exerciſe of his ſaid office of an attorney, openly and publickly ſaid, ſpoke and publiſhed theſe falſe, opprobrious and malicious words following, to wit, *He* (meaning the ſaid *T.*) *is a perjured knave and a rogue, and I* (meaning himſelf the ſaid *W.*) *will prove it.* By pretext of ſpeaking and publiſhing of which ſaid falſe, opprobrious and malicious words, the ſaid *T.* is not only greatly hurt and injured in his good name, fame and reputation, amongſt many honourable and venerable perſons, and other ſubjects of our ſaid lord the preſent king, whoſe attorney the ſaid *T.* then and before was in the ſaid court of the bench, but alſo the ſaid *T.* loſt divers ſums of money which the ſaid *T.* uſed to get and gain of his clients for the honeſt exerciſe of his ſaid office of an attorney, and by that occaſion divers of his clients

and

and other perſons with whom the ſaid *T.* before that time uſed to converſe, have intirely left the ſaid *T.* Wherefore he ſaith that he is injured, and hath damage to the value of 100 *l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *W.* by *F. S.* his attorney cometh and defendeth the force and injury when, *&c.* *And* as to the words (*And a rogue*) above ſpecified in the declaration of the ſaid *T.* the ſaid *W.* ſaith, that he is not guilty of ſpeaking and publiſhiag the ſame, as the ſaid *T.* above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *T.* doth ſo likewiſe, *&c.* *And* as to the ſpeaking and publiſhing the reſidue of the words expreſſed in the ſame declaration, the ſaid *W.* ſaith that the ſaid *T.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that long before the time of ſpeaking and publiſhing thoſe words, the ſaid *W.* in the court of our lord the preſent king of the bench at *W.* in the county of *M.* and before the then juſtices of our ſaid lord the king of the ſame court, impleaded one *F. C.* by the name of *F. C.* late of *H.* in the county aforeſaid, weaver, for that the ſaid *F.* with force and arms had broke and entered the ſaid cloſe of the ſaid *W.* at *H.* aforeſaid, and had broke and ſpoiled the gates of the ſaid *W.* there lately erected, to the value of 40*s.* and had broke and ſpoiled a pump of the ſaid *W.* there alſo lately being, to the value of 60 *s.* and had taken and carried away the water of

Plea, as to part not guilty.

Iſſue.

As to the reſidue, juſtifies.

A ſuit brought by defendant.

the ſaid *W.* to the value of 10*s.* there lately found, and had done other injuries to him, to the great damage of the ſaid *W.* and againſt the peace of our lord the preſent king, &c. *And* whereupon the ſaid *W.* by *J. M.* his attorney complained, that the ſaid *F.* on the 20th day of *December* in the 21ſt year of the reign of our lord the preſent king, with force and arms, &c. had broke and entered the cloſe of the ſaid *W.* called *Home-yard* and *H.* [the whole declaration recited] And thereof he brought ſuit, &c. To which ſaid ſuit the ſaid *F.* by *J. C.* his attorney appeared in the ſame court of our ſaid lord the king of the bench, before the juſtices of our ſaid lord the king of the ſame court, and in the ſame court afterwards, to wit, in the term of the *Holy Trinity* next enſuing, by his ſaid attorney came and defended the force and injury when, &c. *And as to* the whole treſpaſs aforeſaid, except the breaking the cloſe, and taking and carrying away the ſaid water, ſaid that he was in nothing guilty thereof, as the ſaid *W.* above complained againſt him; And of that he put himſelf upon the country: *And* the ſaid *W.* did ſo likewiſe, &c. *And as to* the ſaid breaking the cloſe, and taking and carrying away the ſaid water, above ſuppoſed to be done, the ſaid *F.* ſaid that the ſaid *W.* ought not to have his ſaid action thereupon againſt him, &c. becauſe he ſaid, that before the ſaid time in which the ſaid treſpaſs was above ſuppoſed to be done, to wit, on the 1ſt day of *December* in the 21ſt year aforeſaid,

The declaration.

Plea.

Firſt iſſue.

ſaid, and from that time until the ſaid time, and at the ſaid time in which, *&c.* there was a great drought and want of water in the town of *H.* aforeſaid, and the ſaid *W.* at the ſaid time in which, *&c.* being a pariſhioner of the ſaid town, and a neighbour to the ſaid *F.* and being willing to ſupply the ſaid *W.* in his wants with water from the ſaid pump of the ſaid *W.* gave the ſaid *F.* licence to enter into the ſaid cloſe called *Home-yard*, and from the ſaid pump to take and carry away the ſaid water to his own uſe; by virtue of which licence the ſaid *F.* at the ſaid time in which, *&c.* entered into the ſaid cloſe of the ſaid *W.* called *Home-yard*, and from the ſaid pump took and carried away the ſaid water, as it was lawful for him to do; which was the ſaid treſpaſs, as to the breaking the ſaid cloſe, and taking and carrying away the ſaid water, whereof the ſaid *W.* then above complained againſt him; And this he was ready to verify: Wherefore he prayed judgment if the ſaid *W.* ought to have his ſaid action thereupon againſt him, *&c.* *And* the ſaid *W.* as to the ſaid plea of the ſaid *F.* as to breaking the ſaid cloſe, and taking and carrying away the ſaid water above pleaded in bar, ſaid that he ought not by any thing therein alledged to be barred from having his ſaid action againſt the ſaid *F.* becauſe he ſaid that he the ſaid *W.* did not give to the ſaid *F.* licence to enter into the ſaid cloſe, and to take and carry away the ſaid water from the ſaid pump to his own proper uſe, as the ſaid *F.* had

above in pleading alledged; And he prayed that this might be inquired of by the country: *And* the ſaid *F.* did ſo likewiſe, *&c.* *Therefore,* as well to try the ſaid iſſue as the ſaid other iſſue joined between the ſaid parties, the ſheriff was commanded to cauſe to come before the ſaid juſtices of our lord the king of the bench aforeſaid, from the day of the *Holy Trinity* in three weeks, twelve, *&c.* By whom, *&c.* And who neither, *&c.* To take cognizance, *&c.* Becauſe as well, *&c.* *At which day* the jury between the ſaid parties in the plea aforeſaid was thereupon reſpited between them until from the day of St. *Michael* in three weeks then next enſuing, unleſs the juſtices of our lord the preſent king aſſigned to take the aſſizes in the county aforeſaid by form of the ſtatute, *&c.* ſhould firſt come on *Thurſday* the 14th day of *July* then next enſuing, at the caſtle of *L.* in the county aforeſaid, for default of the jurors, becauſe none of them came. *At which* ſaid *Thurſday* the 14th of *July* in the 22d year aforeſaid, at the caſtle of *L.* aforeſaid, before Sir *T. T.* Knt. and Sir *H. W.* Knt. juſtices of our lord the king of the bench, and juſtices of our ſaid lord the king aſſigned to take the aſſizes in the county of *L.* aforeſaid, by the form of the ſtatute, *&c.* came as well the ſaid *W.* as the ſaid *F.* by their attornies aforeſaid; And the jurors of that jury, to wit, [*naming them*] being demanded, alſo came, and to ſpeak the truth of the premiſes were choſen, tried and ſworn. *Upon which* the ſaid *T. B.* being then and there

Second iſſue. Venire *awarded.*

Niſi Prius.

Trial.

Plaintiff, produced as a witneſs, gave falſe evidence.

there produced as a witneſs on the behalf of the ſaid *F.* for decreaſe of the damages of the ſaid *W. S.* in the ſaid ſecond iſſue, and then and there before the juſtices and jury aforeſaid being charged and ſworn upon the Holy Evangeliſts of God to give to the ſaid jury true evidence concerning the ſaid iſſue between the ſaid parties, the ſaid *T.* then and there upon his oath voluntarily, falſely and corruptly, to the ſaid jury gave in evidence, depoſed and ſwore, that all the town-wells in *H.* aforeſaid, at the time the ſaid treſpaſs was done, were dried up; when in truth, at the time the ſaid treſpaſs was done, there were in *H.* aforeſaid four town-wells, to wit, the conduit, the ſweap-well, *Ward*'s pump and *Worth*'s pump, which then run with water, and were not dried up; whereby the ſaid *T. B.* then and there committed voluntary perjury; and by reaſon thereof the ſaid *W. S.* afterwards, to wit, on the 20th day of *February* in the 30th year of the reign of our lord the preſent king, at the borough of *L.* aforeſaid, ſpoke and publiſhed of the ſaid *T. B.* the ſaid reſidue of the words in the declaration of the ſaid *T.* ſpecified, to wit, *He is a perjured knave, and I will prove it*, as he lawfully might; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T.* ought to have his ſaid action thereupon againſt him, *&c.*

Declaration in caſe for a malicious proſecution in indicting plaintiff's wife.

Middleſex, to wit, *W. M.* late of, *&c.* and *B.* his wife, were attached to anſwer to *J. S.* of a plea of treſpaſs upon the caſe, *&c.*

And whereupon the ſaid *J.* by *J. J.* his attorney complaineth, *that* the ſaid *B.* contriving, and maliciouſly and wickedly intending unjuſtly to grieve, oppreſs, weary and impoveriſh him the ſaid *J.* and put him to great expence, without any reaſonable cauſe, and of her mere malice conceived againſt the ſaid *J.* and *M.* his wife, at his preſent majeſty's general ſeſſions of the peace held at *Hicks's Hall* in *St. John's Street*, in and for the county of *Middleſex*, upon *Monday* the 28th day of *Auguſt* in the 6th year of his preſent majeſty's reign, before *E. B.* Eſq; *T. R.* Bart. *J. G.* Knt. *J. C.* Eſq; and others their companions, his ſaid majeſty's juſtices aſſigned to keep the peace in the ſaid county of *M.* and alſo to hear and determine divers felonies, treſpaſſes and miſdemeanors committed in the ſaid county, falſely and maliciouſly cauſed and procured *M.* the wife of the ſaid *J.* to be indicted by the name of *M.* the wife of *J. S.* late of the pariſh of *St. Paul Covent-Garden*, for that ſhe the ſaid *M.* [*as in the indictment*] crown and dignity: And the ſaid indictment was ſo falſely and maliciouſly proſecuted, and cauſed to be proſecuted againſt the ſaid *M.* by her the ſaid *B.* and at her inſtigation until afterwards, to wit, at his ſaid majeſty's general ſeſſions of the peace held at *H. H.* aforeſaid, in and for the ſaid county of *M.* upon *Monday* the 4th day of *December* in the ſaid 6th year of his preſent majeſty's reign, before *E. B. J. M. T. A.* Eſqs; and others their companions, then his ſaid majeſty's juſtices aſſigned to keep

keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſaid county, ſhe the ſaid *M.* was duly acquitted of the premiſſes in the ſaid indictment above imputed to her, by a jury of the county, and the judgment of the ſaid court: By reaſon whereof he the ſaid *J.* the ſame day and year laſt mentioned, and many times as well before as afterwards, at *W.* in the ſaid county of *M.* was forced to lay out divers ſums of money in the defence of the ſaid *M.* his wife in this behalf, and to undergo great trouble and labour about the ſame, to the damage of the ſaid *J.* of 9*l.* 19*s.* And thereof he bringeth this ſuit, *&c.*

And the ſaid *J.* averreth, that the ſaid *W. M.* named in the ſaid declaration, and *W. M.* named in the ſaid indictment, is one and the ſame perſon, and not any other or different perſon; and that the ſaid *B.* named in the ſaid declaration, and the ſaid *B.* named in the ſaid indictment, is one and the ſame perſon, and not any other or different perſon. *Averment of the identity of the parties.*

Middleſex, to wit, *P. S.* Eſq; complaineth of *H. E.* Gent. in the cuſtody of the marſhal of the *Marſhalſea*, &c. *For that*, to wit, that the ſaid *H.* contriving and maliciouſly intending unjuſtly to vex, diſquiet and greatly injure the ſaid *P.* on the 12th day of *February* in the term of St. *Hilary*, in the 10th year of the reign of our ſovereign lady the preſent queen, proſecuted out of the court of our ſaid lady the queen of Common bench at *W.* in the county of *M.* in the name of C. K. without C. K.'s conſent, B. R. *Declaration in caſe againſt a practiſer, for ſuing out a writ againſt the plaintiff in the name of*

C. K. but without his aſſent, conſent, agreement or notice, a certain writ of our ſaid lady the queen, of *Capias ad reſpondendum* againſt the ſaid *P.* by the name of *P. S.* late of the *Middle Temple*, Gent. directed to the ſheriff of the ſaid county of *M.* whereby it was commanded to him that the ſaid then ſheriff ſhould take the ſaid *P.* if he ſhould be found in his bailiwic, and him ſafely keep, ſo that he might have his body before the juſtices of our ſaid lady the queen at *W.* from the day of *Eaſter* in 15 days then next enſuing, to anſwer the ſaid *C. K.* in a certain plea of treſpaſs on the caſe, upon promiſe in the ſame writ ſpecified, and for not performing thereof, to the damage of the ſaid *C. K.* of 20*l.* By pretext of which ſaid writ the then ſheriff of the ſaid county of *M.* after the iſſuing the ſaid writ, and before the return thereof, to wit, on the 8th day of *April* in the 11th year of the reign of our ſaid lady the preſent queen, at the pariſh of *St. Clement Danes* in the ſaid county of *M.* at the proſecution and ſolicitation of the ſaid *H.* and without the aſſent or notice of the ſaid *C.* took and arreſted the ſaid *P.* by his body; and thereupon the ſaid *H.* without the aſſent or notice of the ſaid *C.* greatly injured the ſaid *P.* to the damage of the ſaid *P.* of 200*l.* And thereof he bringeth ſuit, *&c.*

Declaration in caſe Sur trover, *by aſſignees of the effects of a bankrupt, upon their own poſſeſſion.* C. B.

Wilts, to wit, *E. D.* late of, *&c.* and *R. M.* late of, *&c.* were attached to anſwer to *J. G.* and *R. P.* aſſignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the ſtatutes made concerning

concerning bankrupts, of a plea of treſpaſs upon the caſe; *And* whereupon the ſaid *J.* and *R.* by *S. S.* their attorney complain, *That* they the ſaid *J.* and *R.* on the —— day of —— in the year of our Lord ——, at *B.* in the ſaid county of *W.* were poſſeſſed of thirty broad cloths, of the value of 600*l.* as of their own proper goods and chattels (they being as aforeſaid aſſignees of the debts, goods and chattels of the ſaid bankrupt); *And* being thereof ſo poſſeſſed, they the ſaid *J.* and *R.* the ſaid thirty broad cloths out of their hands and poſſeſſion caſually loſt and miſlaid; which ſaid thirty broad cloths afterwards, to wit, the day and year aforeſaid, at *B.* aforeſaid, came to the hands and poſſeſſion of them the aforeſaid *E.* and *R.* by finding; *And* tho' the aforeſaid *E.* and *R.* knew the aforeſaid cloths to be the proper goods and chattels of the aforeſaid *J.* and *R.* and to them, as aſſignees of the debts, goods and chattels of the aforeſaid *S. L.* the bankrupt, of right to belong and appertain: *Yet* they the aforeſaid *E.* and *R.* contriving and fraudulently intending the aforeſaid *J.* and *R.* of the aforeſaid cloths to deceive and defraud, have not delivered the aforeſaid cloths or any of them to the aforeſaid *J.* and *R.* altho' they have by them been often requeſted to deliver the ſame: But they the aforeſaid *E.* and *R.* afterwards, to wit, the day and year aforeſaid, at *B.* aforeſaid, to their own proper uſe did convert and diſpoſe of the aforeſaid cloths, to the damage of them the

aforesaid *J.* and *R.* 600 *l.* And thereof they bring suit, *&c.*

Declaration in case Sur trover *for money.* C. B.

Somersetshire, to wit, *E. A.* late of, *&c.* was attached to answer to *M. B.* widow, in a plea of trespass upon the case; *And* whereupon the said *M.* by *W. H.* her attorney complaineth, *That* whereas the said *M.* on the 29th day of *February* in the year of our Lord 1736. at *M.* aforesaid was possessed of the monies following, to wit, six pieces of gold coin of this kingdom, commonly called *Jacobus's*, and twelve other pieces of another gold coin of this kingdom, commonly called *Carolus's*, of the value of 20 *l.* and of other 20 *l.* in monies, numbered as of her own proper monies; and being so possessed thereof, the said *M.* afterwards, to wit, on the same day and year, at *M.* aforesaid, casually lost the said monies out of her hands and possession; which said monies afterwards, to wit, at the same time and place, came to the hands and possession of the said *E.* by finding them: *Yet* the said *E.* knowing the said monies to be the proper monies of the said *M.* and to her of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* of the monies aforesaid, hath not yet delivered her the said monies, tho' often requested so to do: But the said *E.* afterwards, to wit, at the same time and place, converted and disposed of the same to her own use; Whereby the said *M.* saith she is prejudiced and damaged to the value of 50 *l.* And thereof she bringeth suit, *&c.*

London,

London, to wit, *A. B.* late of, *&c.* and *E.* his wife, were attached to anſwer *C. D.* in a plea of treſpaſs on the caſe, *&c.* *And* whereupon the ſaid *C.* by *W. R.* his attorney complaineth, *That whereas* the ſaid *C.* on the —— day of —— in the year of our Lord 1729. at *L.* aforeſaid, in the pariſh of *St. Bride's*, otherwiſe *Bridget*, in the ward of *Farringdon without*, was poſſeſſed of the goods and chattels following, namely, of one gold watch, *&c.* to the value of 200 *l.* as of his own goods and chattels; and being ſo poſſeſſed thereof, the ſaid *C.* afterwards, to wit, the ſame day and year laſt above mentioned, at *L.* aforeſaid, in the pariſh and ward aforeſaid, caſually was deprived of and loſt thoſe goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, to wit, the ſame day and year laſt above mentioned, at *L.* aforeſaid, in the pariſh and ward aforeſaid, by finding came to the hands and poſſeſſion of the ſaid *E.* whilſt ſhe was ſingle and unmarried: *Yet* the ſaid *E.* whilſt ſhe was ſingle and unmarried, and the ſaid *A.* and *E.* after the celebration of the marriage between them, knowing thoſe goods and chattels to be the proper goods and chattels of him the ſaid *C.* and of right to belong and appertain to him the ſaid *C.* *Nevertheleſs*, contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *C.* in this particular, hath not nor have (though often requeſted ſo to do) delivered thoſe goods and chattels to the ſaid *C.* but hath and have converted

Declaration in caſe Sur trover *againſt baron and feme, for trover by the wife whilſt ſole.* C. B. Andrews 242.

converted and diſpoſed of thoſe goods and chattels afterwards, to wit, the ſame day and year laſt above mentioned, at *L.* aforeſaid, in the pariſh and ward aforeſaid, to the proper uſe and advantage of her the ſaid *E.* while ſhe was ſingle and unmarried, and to the proper uſe and advantage of them the ſaid *A.* and *E.* after the celebration of their ſaid marriage, namely, the ——— day of ——— in the year of our Lord 1735. at *L.* aforeſaid, to the damage of the ſaid *C.* 200 *l.* And thereof he bringeth ſuit, *&c.*

Declaration in caſe for throwing down a dam, and diverting a water courſe. C.B. Carth. 84. S.C. 3 Lev. 133. Skin. 65, 175. Comb. 9. 1 Show. 64. 2 Show. 243, 249. 3 Mod. 48.

Yorkſhire, to wit, *J. H.* late of the pariſh of *N.* in the county aforeſaid, Eſq; was attached to anſwer *W. P.* Eſq; of a plea of treſpaſs upon the caſe. *And* whereupon the ſaid *W.* by *T. L.* his attorney complaineth that the ſaid *J.* on the 14th day of *May* in the 32d year of the reign of our lord the preſent king, unjuſtly and maliciouſly broke, threw down and proſtrated great part of a certain ancient dam in and upon the river *D.* in the pariſh aforeſaid, and thereby for a great time, *to wit*, from the ſaid 14th day of *May* in the thirty-ſecond year aforeſaid, until the feaſt of St. *Michael* the Archangel then next enſuing diverted and hindred great part of the water of the ſaid river from its antient and uſual courſe to and towards a water corn-mill of the ſaid *W.* ſituate upon the ſaid river in the pariſh of *O. M.* whereby the ſaid *W.* loſt the benefit and profit of his ſaid mill for the whole time aforeſaid. Wherefore the ſaid *W.* ſaith, that he is injured,

jured, and hath damage to the value of 100 *l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *J.* by —— his attorney cometh and defendeth the force and injury, *&c.* and ſaith, that the ſaid *W.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that before the time of breaking, throwing down, and proſtrating the ſaid dam, *to wit*, on the firſt day of *May* in the 31ſt year of the reign of our lord the preſent king, he the ſaid *J.* was ſeiſed in his demeſne, as of fee, of and in an antient water corn-mill in *N.* aforeſaid, and alſo of and in ſix acres of land next adjoining on the part of the ſaid mill, in which ſix acres of land the ſaid dam in the ſaid declararation of the ſaid *W.* mentioned, from the time to the contrary whereof the memory of man is not, had been made for conveying and directing a water-courſe from the ſaid river *D.* to the ſaid antient mill, and for the whole time foreſaid was repaired and maintained by the ſaid *J.* and other tenants for the time being of the ſaid antient mill without the contribution of any other perſon whatſoever, or for any other uſe than for conveying a water-courſe from the ſaid river for wheeling about by the fall of the ſaid water, and turning the wheels of his ſaid antient mill. And the ſaid *J.* further ſaith, That the ſaid antient mill on the ſaid firſt day of *May* in the 31ſt year aforeſaid was by accident intirely burnt and deſtroyed by fire. And becauſe the ſaid *J.* did not intend to rebuild the ſaid antient mill, the ſaid *J.*

Plea, the dam was on defendant's freehold.

J. afterwards, *to wit*, on the ſaid 14th day of *May* in the 32d year aforeſaid, broke, threw down and proſtrated great part of the ſaid dam, being built in and upon the ſaid ſix acres of land, the freehold of the ſaid *J.* and diſpoſed and converted the ſtones and lime coming therefrom to his own proper uſe, as it was lawful for him to do. Which is the ſame, *&c.* And this, *&c.*

Declaration in caſe for ſelling an unſound horſe, warranting him to be ſound. C. B.

London, to wit, *O. J.* late of, *&c.* was attached to anſwer unto *J. S.* of a plea of treſpaſs on the caſe, *&c.* And thereupon the ſaid *J.* by *G. H.* his attorney complaineth, That *whereas* the ſaid *J.* on the 16th day of *July* in the year of our Lord 1735, at *London*, to wit, in the pariſh of St. *Mary le Bow* in the ward of *Cheap* bargained with the ſaid *O.* to buy of the ſaid *O.* a certain gelding of the ſaid *O.*'s, and the ſaid *O.* then and there well knowing the ſaid gelding to be unſound, and labouring under and afflicted with a certain diſtemper called the *Glanders*, by warranting the ſaid gelding to be ſound in all reſpects, then and there falſely and fraudulently bargained and ſold the ſaid gelding, as and for a gelding ſound in all reſpects, to the ſaid *J.* for a large ſum of money, to wit, for 5 *l.* 5 *s.* which ſaid gelding was then and there unſound, and afflicted with and labouring under the ſaid diſtemper called the *Glanders*, and ſo always afterwards there remained: And thus the ſaid *O.* on the ſaid 16th day of *July* in the year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, falſly and fraudulently deceived the

the ſaid *J.* to the ſaid *J.*'s damage of 20*l.* And thereof he bringeth ſuit, *&c.*

Challenge.

Challenge at Niſi prius *to the array of the panel, becauſe the plaintiff was underſheriff, and arrayed the panel.*

Suffolk, to wit: *And* now at this day, that is to ſay, *Friday* the 27th day of *Auguſt* in the 10th year of the reign of the ſaid king, at *Bury St. Edmund*'s aforeſaid, come the aforeſaid *A.* in his proper perſon, and the ſaid *S.* by his ſaid attorney, and the jurors impanelled in this cauſe are demanded and came, and thereupon the aforeſaid *S.* challengeth the array of the panel aforeſaid, becauſe he ſaith that the ſaid panel was arrayed by the ſaid *A.* now and at the time of the ſaid arraynment made underſheriff of the ſaid county of *S.* and deputy of *J. C.* Eſq; ſheriff of the ſame county; And this the ſaid *S.* is ready to verify: Wherefore he prayeth the judgment of this court thereupon, and that the ſaid panel may be quaſhed, *&c.* *T. Dixon.*

Covenant.

Declaration in covenant. C. B.

Middleſex, to wit, *G. F.* late of *Cavendiſh-Square* in the ſaid county of *M.* Eſq; otherwiſe called the honourable *G. F.* Eſq; lieutenant-general of the iſland of *St. Chriſtopher*, was ſummoned to anſwer to *T. B.* in a plea, that he keep with him the covenant made between them, according to the force,

form and effect of certain articles of agreement thereof made between the ſaid *T. B.* and the ſaid *G. F.* and *M. W.* and *J. A.* &c. *And* whereupon the ſaid *T.* by *R. B.* the younger his attorney ſaith, that *whereas* by certain articles of agreement indented and made at *W.* in the ſaid county of *M.* on the 17th day of *January* in the year of our Lord 1738. between the ſaid *T. B.* of *R.* in the county of *C.* miner, of the one part, and the ſaid *G. F. M. W.* and *J. A.* by the names of the honorable *G. F.* Eſq; lieutenant general of the iſland of *St. Chriſtopher's*, *M. W.* of the city of *Briſtol*, whitawer, and *J. A.* of the iſland of *Spaniſh Town*, ſurgeon, as well on behalf of themſelves, as others their copartners and ſharers of and in certain mines and mineral works in the iſland of *Spaniſh Town* in the *Britiſh* leeward *Carribee iſlands* in *America*, one part of which ſaid articles, ſealed with the ſeal of the ſaid *G. F.* the ſaid *T. B.* bringeth here into court, bearing date the ſame day and year, the ſaid *T. B.* for and in conſideration of the wages or ſalary therein mentioned, did covenant and agree to and with the ſaid *G. F. M. W.* and *J. A.* their and each of their executors, adminiſtrators and aſſigns, in manner following, to wit, *That* the ſaid *T. B.* from time to time, and at all times during the term of ſeven years, to be, commence and be accounted from the time of his the ſaid *T. B.*'s arrival at the iſland of *Spaniſh Town* aforeſaid, ſhould and would well and faithfully, and to the utmoſt of his ſkill and judgment, work for and

Profert.

and ſerve the ſaid *G. F. M. W.* and *J. A.* and other their copartners, their and each of their executors, adminiſtrators and aſſigns, as overſeer and director in the ſinking and working their copper, and other mines and mineral works, lying and being in the iſland of *Spaniſh Town* aforeſaid, or in any other the *Britiſh* leeward *Caribbee iſlands* aforeſaid, and do and perform buſineſs relating to the ſaid mines, and the produce thereof, as they the ſaid *G. F. M. W.* and *J. A.* and other their copartners, any or either of them, ſhould from time to time direct and appoint: *And* alſo that he the ſaid *T. B.* ſhould not nor would, without leave firſt had and obtained, abſent himſelf from the ſervice aforeſaid, nor voluntarily nor negligently waſte or deſtroy any the goods, wares or materials of the ſaid *G. F. M. W.* and *J. A.* and their ſaid copartners, but in and concerning all and ſingular the ſaid buſineſs and ſervice aforeſaid to be true and faithful, and do and perform the ſame according to the beſt of his knowledge, and to the utmoſt benefit and advantage of the ſaid *G. F. M. W.* and *J. A.* and their ſaid copartners, their executors, adminiſtrators and aſſigns. *And* in conſideration of the premiſſes, the ſaid *G. F. M. W.* and *J. A.* jointly and ſeverally for themſelves and their ſaid copartners, and their and each of their executors and adminiſtrators, did covenant, promiſe and agree, to and with the ſaid *T. B.* his executors and adminiſtrators, by the ſaid articles in manner following; that is to ſay, *That* they the ſaid *G. F. M. W.*

M. W. and *J. A.* and their copartners, ſome or one of them, or ſome or one of their executors or adminiſtrators, ſhould and would pay unto the ſaid *T. B.* his executors and adminiſtrators, for the firſt year of the ſaid term before mentioned, the ſum of 20*l.* of lawful *Britiſh* money, and for every other year of the ſaid term of ſeven years the ſum of 30*l.* of like lawful money, and ſo proportionably, as ſalary or wages for the work and ſervice to be by him done and performed as aforeſaid; *And* alſo pay and allow him 5*s. per* ton for every ton of copper which during the ſaid term ſhould be raiſed and dreſſed by the direction and aſſiſtance of him the ſaid *T. B.* All which ſaid wages and monies were to be paid and payable quarterly, by equal portions; *And* likewiſe find and provide him competent and ſufficient meat, drink, waſhing and lodging, during the ſaid term. *And* it was agreed by and between all and ſingular the ſaid parties, that in caſe the ſaid *G. F. M. W.* and *J. A.* and other their copartners, ſhould be minded and deſirous to determine and make void the ſaid articles, at the expiration of one year from the commencement thereof, or at any time afterwards during the ſaid term, and ſhould give to the ſaid *T. B.* one month's notice thereof in writing, then and after the expiration of ſuch one month, the ſaid term thereby contracted for, as well as the ſaid articles, ſhould ceaſe and be void; any thing before contained to the contrary notwithſtanding. *And* it was agreed by and between the ſaid parties, that the ſaid *G. F. M. W.*

and

and *J. A.* their executors and adminiſtrators, ſome or one of them, ſhould and would at their expence, coſts and charges, find and provide a paſſage for the ſaid *T. B.* to the ſaid mines in *Spaniſh Town* aforeſaid; and if they diſmiſſed him from their ſervice before the expiration of the ſaid term thereby contracted for, to return him back to *England* again expence-free, if he ſhould chuſe to return at the time of their ſo diſmiſſing him, as in and by the ſaid articles of agreement more fully appeareth. *And* although the ſaid *T.* in purſuance of the ſaid articles of agreement, afterwards, to wit, on the 21ſt day of *Auguſt* in the year of our Lord 1739. arrived at the ſaid iſland of *Spaniſh Town* in foreign parts, and did there well and faithfully, and to the utmoſt of his ſkill and judgment, work for and ſerve the ſaid *G. M.* and *J.* and their copartners, as overſeer and director in the ſinking and working their copper and other mines and mineral works lying and being in the iſland of *Spaniſh Town* aforeſaid, and other the *Britiſh Caribbee iſlands* aforeſaid, and did and performed buſineſs relating to the ſaid mines and the produce thereof, as they the ſaid *G. M.* and *J.* and other their copartners did from time to time direct and appoint, for a certain time, to wit, for the ſpace of one year and a half then next following; by reaſon whereof a certain ſum of money, to wit, the ſum of 35 *l.* of lawful money of *Great Britain*, became due and payable to the ſaid *T.* for his ſalary and wages aforeſaid: *Neverthelefs* the ſaid *G. M.* *First breach.*

and *J.* or any of them, or their ſaid copartners or any of them, did not pay to the ſaid *T.* the ſaid 35 *l.* or any part thereof, but wholly neglected and refuſed to pay the ſame, and the ſaid 35 *l.* are ſtill due and in arrear to the ſaid *T.* *And* the ſaid *T.* further ſaith, that the ſaid *G. M.* and *J.* or any of them, or their ſaid copartners or any of them, during the ſaid ſervice of the ſaid *T.* or any part thereof, did not find and provide for him competent and ſufficient meat, drink, waſhing and lodging, or any meat, drink, waſhing or lodging whatſoever, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but neglected ſo to do, contrary to the form and effect of that covenant. *And* the ſaid *T.* further ſaith, that during the ſaid time that he the ſaid *T.* was in the ſaid ſervice as aforeſaid, thirteen tons of copper oar were raiſed and dreſſed in the ſaid mines and mineral works in the ſaid iſland of *Spaniſh Town*, by the direction and aſſiſtance of him the ſaid *T.* by reaſon whereof 65 *s.* of lawful money of *Great Britain* became due and payable to the ſaid *T.* to wit, 5 *s.* for each of thoſe thirteen tons of oar: *Neverthelеſs* the ſaid *G. M.* and *J.* did not, nor did any of them pay to the ſaid *T.* the ſaid 65 *s.* or any part thereof, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but wholly neglected to pay the ſame, and ſtill refuſeth to pay the ſame to the ſaid *T.* contrary to the form and effect of that covenant.

Second breach.

Third breach.

And

And the ſaid *T.* ſaith, that the ſaid *G. M.* and *J.* did not, nor did any of them find and provide at their or any of their expence, coſts and charges, a paſſage for the ſaid *T.* to the ſaid mines in *Spaniſh Town* aforeſaid, according to the form and effect of the ſaid covenant, of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but neglected ſo to do, contrary to the form and effect of that covenant. *Fourth breach.*

And the ſaid *T.* further ſaith, that although the ſaid *G. M.* and *J.* at the end of the ſaid one year and an half diſmiſſed the ſaid *T.* from their ſaid ſervice in the iſland of *Spaniſh Town* aforeſaid; and although he the ſaid *T.* then and there upon his ſaid diſmiſſion gave notice to the ſaid *G. M.* and *J.* that he was minded and willing to return back to *England*, and then and there requeſted them to return him back to *England* expence-free, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid: *Nevertheleſs* the ſaid *G. M.* and *J.* did not, nor did any of them return the ſaid *T.* back to *England* expence-free, according to the form and effect of the ſaid covenant of the ſaid *G. M.* and *J.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but neglected and refuſed ſo to do, contrary to the form and effect of that covenant: *And* ſo the ſaid *T.* ſaith, that the ſaid *G.* (although often requeſted) hath not kept with the ſaid *T.* his ſaid covenant ſo made with him the ſaid *T.* in that reſpect as aforeſaid, but hath broke it, and hath hitherto wholly denied and ſtill denieth to *Fifth breach.*

keep the ſame with the ſaid *T.* Whereby the ſaid *T.* ſaith that he is injured, and hath damage to the value of 200 *l.* And thereof he bringeth ſuit, *&c.*

Plea. *And* the ſaid *G.* by *J. S.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his action aforeſaid againſt him; *Becauſe*, as to the ſaid breach of covenant by the ſaid *T.* firſt above aſſigned, the ſaid *G.* ſaith, that they the ſaid *G. M.* and *J.* paid to the ſaid *T.* all the ſalary and wages due to him from them, for the work and ſervice by him done and performed, according to the form and effect of the ſaid covenant in this behalf made, to wit, upon the 21ſt day of *February* in the year of our Lord 1740. at *W.* aforeſaid: And of this he putteth himſelf upon the country. *And* as to the ſaid breach of covenant ſecondly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* did during all the time that the ſaid *T.* continued in the ſaid ſervice, find and provide for him competent and ſufficient meat, drink, waſhing and lodging, according to the form and effect of the ſaid covenant in this behalf made: And of this the ſaid *G.* putteth himſelf upon the country. *And* as to the ſaid breach of covenant thirdly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* paid and allowed to the ſaid *T.* 5 *s. per* ton for every ton of copper oar which was raiſed and dreſſed in the ſaid mines and mineral works in the ſaid articles mentioned, by the direction

As to the firſt breach.

As to the ſecond breach.

As to the third breach.

and

and aſſiſtance of the ſaid *T.* according to the form and effect of the ſaid covenant in this behalf made, to wit, upon the ſaid 21ſt day of *February* in the ſaid year 1740. at *W.* aforeſaid: And of this he putteth himſelf upon the country. *And* as to the ſaid breach of covenant fourthly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* did find and provide at their own expence, coſts and charges, a paſſage for the ſaid *T.* to the ſaid mines in *Spaniſh Town* aforeſaid, according to the form and effect of the ſaid covenant in this behalf made, to wit, upon the 21ſt day of *May* in the ſaid year of our Lord 1739. at *W.* aforeſaid: And of this the ſaid *G.* putteth himſelf upon the country. *And* as to the ſaid breach of covenant laſtly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* at the end of the ſaid one year and an half did not diſmiſs the ſaid *T.* from their ſaid ſervice in the iſland of *Spaniſh Town* aforeſaid, as the ſaid *T.* hath by his ſaid declaration above alledged: And of this alſo the ſaid *G.* putteth himſelf upon the country. *R. Draper.*

As to the fourth breach.

As to the fifth breach.

Herefordſhire, to wit, *J. T.* late of the pariſh of *W.* in the ſaid county, huſbandman, was ſummoned to anſwer to *E. J.* and *M. J.* in a plea, that he keep with them the covenant between them made, according to the force, form and effect of a certain indenture thereof between them made, *&c. And whereupon* the ſaid *E.* and *M.* by *R. M.* their attorney ſay, *That whereas* by a

Declaration in covenant on a leaſe, for not repairing, and for committing waſte. C. B. Hil. 11 G. 2. ro. 1392.

Recital of leaſe.

a certain indenture made at the parish of *W.* aforesaid, on the 7th day of *February* in the year of our Lord 1732. between the said *E.* and *M.* by the names of *E. J.* and *M. J.* both of the parish of *W.* aforesaid in the county of *H.* aforesaid, spinsters, in trust and to the use of *J. J.* their nephew, being then under the age of twenty-one years, of the one part, and the said *J.* by the name of *J. T.* of the parish of *W.* aforesaid and county aforesaid, husbandman, of the other part,

Profert. *The* counterpart of which said indenture, sealed with the seal of the said *J.* the said

Demise. *E.* and *M.* bring here into court, bearing date the same day and year, the said *E.* and *M.* for the consideration therein mentioned, demised, granted, set and to farm let, unto the said *J.* his executors, administrators and

Premises. assigns, All that messuage or tenement wherein the said *J.* then dwelt, situate, lying and being at *L.* in the several parishes of *W.* and *G.* in the county of *H.* aforesaid, together with the outhouses, barns, stables, sheepcotes, buildings, gardens and orchards, lands arable, meadow and pasture, coppice of wood, known by the several names of *M.* and *T.* (but the fore-parlour, and likewise one room or chamber in the said dwelling-house which was above the parlour, and also one part of the little garden wherein the stocks grew, were excepted and reserved to the use of the said *E.* and *M.* their heirs and assigns) together with all ways, waters, water-courses, easements, privileges, profits and appurtenances thereto belonging or in any wise appertaining,

pertaining, unto the ſaid *J.* his executors, adminiſtrators and aſſigns; *To have and to hold* all and ſingular the ſaid dwelling-houſe or tenement, out-houſes, barns, ſtables, ſheep-cotes, buildings, edifices, gardens and orchards, lands arable, meadow and paſture, with their and every of their appurtenances, as before in the ſaid indenture mentioned to be demiſed to the aforeſaid *J.* his executors, adminiſtrators and aſſigns, from the 2d day of *February* then laſt paſt, for and during and until the full end and term of four years, from thenceforth fully to be complete and ended: *Yielding and paying* therefore yearly and every year, during the aforeſaid term, unto the ſaid *E.* and *M.* their heirs and aſſigns, the yearly rent or ſum of 56*l.* of lawful *Engliſh* money, to be paid at theſe two uſual times of payment in the year, (that is to ſay) at and upon every 2d day of *February* and every 2d day of *Auguſt*, by even and equal parts or portions; the firſt payment to commence and take place at and upon the 2d day of *Auguſt* next enſuing the date of the ſaid indenture. *And* it was by the ſaid indenture covenanted and agreed upon by and between the ſaid parties above-mentioned, that they the ſaid *E.* and *M.* their heirs and aſſigns, ſhould and would before the feaſt day of St. *Michael* the archangel next enſuing the date of the ſaid indenture, at their own proper coſts and charges well and ſufficiently repair, amend and put the aforeſaid premiſes, by the ſaid indenture granted, in a good and tenantable repair:

Habendum.

Reddendum.

Covenants.

And he the ſaid *J.* did for himſelf, his executors, adminiſtrators and aſſigns, covenant, promiſe and agree, to and with the ſaid *E.* and *M.* their heirs and aſſigns, that he the ſaid *J.* his executors, adminiſtrators and aſſigns, ſhould and would from time to time, and at all times during the term by the ſaid indenture granted, at his or their own proper coſts and charges well and ſufficiently repair, amend, maintain, ſuſtain, uphold and keep all and ſingular the ſaid demiſed premiſes, with their and every of their appurtenances, in ſo good and tenantable reparation and amendment: *And* that the ſaid *J.* his executors, adminiſtrators and aſſigns, ſhould not at any time during the ſaid term commit, cauſe, procure or ſuffer to be committed or done any manner of wilful waſte, ſpoil or deſtruction, in or upon the ſaid demiſed premiſes, in cutting down any timber-trees, (except what were neceſſary for the uſe of the ſaid premiſes) as by the ſaid indenture more fully appeareth: *By virtue* of which demiſe the ſaid *J.* entered into the ſaid demiſed premiſes with the appurtenances, and was poſſeſſed thereof for and during the ſaid four years to him granted as aforeſaid, to wit, until and upon the 2d day of *February* in the year of our Lord 1736. *And* altho' the ſaid *E.* and *M.* before the ſaid feaſt of St. *Michael* the archangel next after the date of the ſaid indenture, at their own proper coſts and charges did well and ſufficiently repair, amend and put the aforeſaid premiſes by the ſaid indenture granted in tenantable

Defendant entered.

nantable repair: *Nevertheleſs* the ſaid *J.* from time to time, and at all times during the reſidue of the ſaid term, did not well and ſufficiently repair, amend, maintain, ſuſtain, uphold and keep the ſaid demiſed premiſes in ſo good and tenantable reparation and amendment, according to the form and effect of the ſaid covenant of the ſaid *J.* ſo made with the ſaid *E.* and *M.* in that reſpect as aforeſaid. *And* the ſaid *E.* and *M.* further ſaith, that the ſaid *J.* during the ſaid term, to wit, on the 1ſt day of *February* in the year of our Lord 1736. aforeſaid, did wilfully commit waſte, ſpoil and deſtruction, in and upon the ſaid demiſed premiſes, in cutting down timber-trees, to wit, 20 oaks, 30 aſhes, and 40 elms, growing in and upon the ſaid demiſed premiſes, (other than what was neceſſary for the uſe of thoſe premiſes) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of his ſaid covenant ſo made with the ſaid *E.* and *M.* in that reſpect as aforeſaid: *And* ſo the ſaid *J.* (altho' often requeſted) hath not kept his ſaid covenant ſo made as aforeſaid with the ſaid *E.* and *M.* but hath broke it, and has hitherto wholly denied, and ſtill doth deny to keep the ſame with the ſaid *E.* and *M.* Whereby the ſaid *E.* and *M.* ſay that they are injured, and have damage to the value of 40 *l.* And thereof they bring ſuit, *&c.*

First breach.

Second breach.

And the ſaid *J.* by *T. R.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *E.* and *M.*

Plea.

As to the first breach.

M. ought not to have their ſaid action againſt him, becauſe, *As to* the breach of covenant above ſuppoſed to be made in this, That altho' the ſaid *E.* and *M.* before the ſaid feaſt of St. *Michael* the archangel next after the date of the ſaid indenture, at their own proper coſts and charges, did well and ſufficiently repair, amend and put the aforeſaid premiſes by the ſaid indenture granted, in good and tenantable repair: *Nevertheleſs* the ſaid *J.* from time to time, and at all times during the reſidue of the ſaid term, did not well and ſufficiently repair, amend, maintain, ſuſtain, uphold and keep the ſaid demiſed premiſes in ſo good and tenantable reparation and amendment, according to the form and effect of the ſaid covenant of the ſaid *J.* ſo made with the ſaid *E.* and *M.* in that reſpect as aforeſaid, he the ſaid *J.* ſaith, that the ſaid *E.* and *M.* before the ſaid feaſt-day of St. *Michael* the archangel next after the date of the ſaid indenture, did not well and ſufficiently repair, amend and put the aforeſaid premiſes by the ſaid indenture granted in good and tenantable repair, as they the ſaid *E.* and *M.* have by their ſaid declaration above alledged: And hereupon he putteth himſelf upon the country: *And* the ſaid *E.* and *M.* do ſo likewiſe. *And as to* the breach of covenant above ſuppoſed to be made in this, that the ſaid *J.* did commit wilful waſte, ſpoil and deſtruction in and upon the ſaid demiſed premiſes, in cutting down the ſaid timber-trees, growing in and upon the ſaid demiſed premiſes, (other than what

Iſſue.

As to the ſecond breach.

what were neceſſary for the uſe of thoſe premiſes) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of the ſaid covenant ſo made with the ſaid *E.* and *M.* in that reſpect as aforeſaid, the ſaid *J.* ſaith, that he the ſaid *J.* did not commit the ſaid waſte, ſpoil or deſtruction, in manner and form as the ſaid *E.* and *M.* have by their ſaid declaration above ſuppoſed; And hereupon he putteth himſelf upon the country: *And* the ſaid *E.* and *M.* do ſo likewiſe. *Therefore* the ſheriff is commanded that he cauſe to come in eight days from the purification of the bleſſed virgin *Mary* twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

Iſſue.
Venire.

Hertfordſhire, to wit, *T. H.* Gent. complaineth of *B. S.* widow, aſſignee of *R. F.* deceaſed, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea of breach of covenant; *For that whereas* the ſaid *T.* by a certain indenture made at *Berkamſtead St. Peter's* in the county of *Hertford* aforeſaid, in the life-time of the ſaid *R.* to wit, on the 18th day of *Auguſt* in the year of our Lord 1735. between the ſaid *T.* by the name of *T. H.* of *Berkamſtead St. Peter's* aforeſaid in the county of *H.* aforeſaid, Gent. of the one part, and the ſaid *R.* by the name of *R. F.* of the ſame place ſurgeon, of the other part, *The* counterpart of which ſaid indenture, ſealed with the ſeal of the ſaid *R.* the ſaid *T.* bringeth here into court, bearing date the ſame

Declaration in covenant againſt the aſſignee of a leſſee for years, for non-payment of rent.
B. R.
Recital of leaſe.
Profert.

ſame day and year, for the conſideration
Demiſe. therein mentioned, *did* demiſe, leaſe, and
to farm let, unto the ſaid *R. F.* his execu-
Premiſes. tors, adminiſtrators and aſſigns, All that his
meſuage, tenement or dwelling-houſe, ſituate,
ſtanding and being in the high-ſtreet of
Berkamſtead St. Peter's aforeſaid, then in the
poſſeſſion or occupation of the ſaid *T. H.* his
aſſignee or aſſigns, and adjoining to or lying
next to the meſuage or tenement of the ſaid
T. H. in poſſeſſion of Mrs. *A. A.* on the
eaſt, and to the charity-ſchool the gift of
T. B. Eſq; on the weſt, and alſo the range
of buildings behind the thereby intended to
be demiſed meſuage, lying next to or abut-
ting on the ſaid ſchool, and the ſtable and
granaries over the ſame, with the gate-way
and hay-loft over it, with free liberty of in-
greſs, egreſs and regreſs, to and for the ſaid
R. F. his executors, adminiſtrators and aſ-
ſigns, ſervants, familiars and friends, at any
time or times during the ſaid demiſe, to
come, go, paſs and repaſs, in and by and
through the gates next the ſtreet to the ſta-
ble only with horſes, or otherwiſe as occa-
ſion ſhould require, he or they locking the
ſaid gates up on nights, together with all
and every the yards, area's, walks, pounds-
ways, waters, and appurtenances whatſoever,
to the ſame premiſes then belonging, uſed,
or in any ways appertaining, then in the oc-
cupation of the ſaid *T. H.* his aſſignee or aſ-
ſigns, and uſed with or reputed to belong to
Exception. the ſame meſuage or tenement (except and al-
ways reſerved out of the ſaid demiſe and leaſe

full

full and free liberty of ingreſs, egreſs and regreſs, to and for the ſaid Mrs. *A. A.* her executors, adminiſtrators or aſſigns, ſervants, familiars and friends, or the tenant for the time being of the ſaid meſuage wherein ſhe dwells, with waggons, carts, carriages, or otherwiſe to carry in wood through the gateway thereby demiſed, and to paſs and repaſs with dung to the dunghill, when and as often as ſhe or they ſhould have occaſion, without any hindrance or interruption by the ſaid *R. F.* his executors, adminiſtrators or aſſigns, by ſtopping or hindring the paſſage in the gateway, or otherwiſe; and alſo except to the ſaid *T. H.* his heirs or aſſigns, the great ſtable, with the lofts over the ſame, and the granary over the ſaid Mrs. *A. A.*'s woodhouſe;) *To have and to hold* the ſaid meſuage, tenement or dwelling-houſe, and all other the aforeſaid demiſed and leaſed premiſes, and every part and parcel thereof, with their and every of their appurtenances, (except as before excepted) unto the ſaid *R. F.* his executors, adminiſtrators and aſſigns, from the feaſt-day of St. *Michael* the archangel next enſuing the date of the ſaid indenture, unto the full end and term of twelve years from thence next and immediately enſuing, and fully to be complete and ended: *Yielding and paying* therefore yearly and every year, for and during the ſaid term of twelve years, unto the ſaid *T. H.* his heirs and aſſigns, at or in the then dwelling-houſe of *E. W.* widow, in the pariſh of *N.* in the ſaid county of *H.* the yearly rent or ſum of 12 *l.* of

Habendum.

Reddendum.

of lawful money of *Great Britain*, at two uſual feaſts or days of payment in the year, that is to ſay, at the feaſt-day of the annunciation of the bleſſed virgin *Mary*, and St. *Michael* the archangel, by even and equal portions; the firſt payment thereof to begin and be made on the feaſt-day of the annunciation of the bleſſed virgin *Mary* next enſuing the commencement of the ſaid indenture. *And* the ſaid *R. F.* for himſelf, his heirs, executors, adminiſtrators and aſſigns, and for every of them, in and by the ſaid indenture did covenant, promiſe and grant, to and with the ſaid *T. H.* his heirs and aſſigns, and to and with every of them, in manner and form following; that is to ſay, that he the ſaid *R. F.* his executors, adminiſtrators and aſſigns, or ſome of them, ſhould and would well and truly pay, or cauſe to be paid unto the ſaid *T. H.* his heirs or aſſigns, the ſaid yearly rent or ſum of 12*l.* of good and lawful money of *Great Britain*, therein before reſerved, at the times and place therein before mentioned or limited for the payment thereof, according to the true intent and meaning of the ſaid indenture, as by the ſaid indenture more fully appeareth. *By virtue* of which ſaid demiſe thereof, the ſaid *R.* entered into the ſaid demiſed premiſes with the appurtenances, and was poſſeſſed thereof: *And being* ſo poſſeſſed thereof, afterwards, to wit, on the 1ſt day of *February* in the year of our Lord 1743. the ſaid demiſed premiſes with the appurtenances, and all the eſtate, right, title,

Covenant to pay the rent.

Leſſee enters.

Premiſes aſſigned to defendant.

tle, intereſt and term of years of the ſaid *R.* therein then to come and unexpired, came to the ſaid *B.* by aſſignment. *By virtue* of which aſſignment thereof the ſaid *B.* entered into the ſaid demiſed and aſſigned premiſes, with the appurtenances, and was and ſtill is poſſeſſed thereof. *And being* ſo poſſeſſed thereof, ſhe the ſaid *B.* did not pay, or cauſe to be paid unto the ſaid *T.* 6 *l.* of the ſaid yearly rent of 12 *l.* which became due from the ſaid *B.* to the ſaid *T.* after the ſaid aſſignment, for half a year of the ſaid term, ending on the feaſt of St. *Michael* the archangel in the year of our Lord 1744. on that feaſt, according to the form and effect of the ſaid covenant of the ſaid *R.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, or any part of the ſaid 6 *l.* at any time hitherto, but the ſaid 6 *l.* of the rent aforeſaid ſtill remain due and in arrear from the ſaid *B.* to the ſaid *T.* contrary to the form and effect of that covenant: *And ſo* the ſaid *T.* ſaith that the ſaid *B.* after the ſaid aſſignment ſo made to her as aforeſaid, (although often requeſted) hath not kept the ſaid covenant of the ſaid *R.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but hath broke it, and hath hitherto wholly refuſed, and ſtill refuſeth to keep the ſame with the ſaid *T.* to the damage of the ſaid *T.* of 10 *l.* And thereof he bringeth ſuit, *&c.*

Defendant enters.

Breach.

Pledges to proſecute { J. D. *and* R. R.

And

Plea, that nothing of the premiſes ever came to the defendant by aſſignment.

And the ſaid *B.* by *G. W. G.* her attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his ſaid action thereupon againſt her, becauſe ſhe ſaith that nothing of the ſaid demiſed premiſes with the appurtenances ever came to the ſaid *B.* by aſſignment, as the aforeſaid *T.* by his declaration has above alledged; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if the ſaid *T.* ought to have or maintain his ſaid action thereupon againſt her, *&c.*

J. Lacy.

Replication, that the premiſes did come to defendant by aſſignment.

And the ſaid *T.* ſaith, that he by any thing by the ſaid *B.* in her ſaid plea above alledged, ought not to be barred from having or maintaining his ſaid action againſt her, becauſe he ſaith that the ſaid demiſed premiſes, with the appurtenances, did come to the ſaid *B.* by aſſignment, as he has before alledged; And of this he putteth himſelf upon the country: *And* the ſaid *B.* doth ſo likewiſe, *&c.* Therefore, *&c.* *W. Wynne.*

Debt.

Declaration in debt on the ſtat. 21 H. 8. c. 13. *for non-reſidence.* Lil. Ent. 151.

R. F. who as well, *&c.* complaineth of *W. C.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to our ſaid lord the king, and to the ſaid *R.* who as well, *&c.* 70*l.* of lawful money of *England*, which he oweth to our ſaid lord the king, and to the ſaid *R.* who as well, *&c.* and unjuſtly

MVSEVM BRITANNICVM

justly detaineth, *For that*, that the said *W.* on the 1st day of *April* in the 4th year of the reign of our said lord the present king, and from that time continually afterwards, for the space of one whole year thence next ensuing, was and continued a spiritual and beneficed person, to wit, the said *W.* for the whole time aforesaid was and still is vicar of the vicarage of the parochial church of *M.* and beneficed in the same; and that the said *W.* for seven months together, in the year aforesaid, to be computed from the 1st day of *May* in the same year, was not personally resident or abiding at or on his said vicarage, nor in, at or upon any other his benefice, but the said *W.* voluntarily absented himself the said seven months from his said vicarage, and was not resident upon his said vicarage, nor in, at or upon any other benefice, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued to the said *R.* who as well, *&c.* to demand and have of the said *W.* 70*l.* to wit, 10*l.* for every month committed by the said *W.* as aforesaid, contrary to the form of the said statute. *Yet* the said *W.* although often requested, *&c.* hath not yet paid the said 70*l.* to our said lord the king, and to the said *R.* who as well, *&c.* but hath hitherto entirely refused, and still doth refuse to pay them the same: Wherefore the said *R.* who as well, *&c.* saith that he is injured, and hath damage to the value of 20*l.* And therefore as well for our said lord the king as for himself he bringeth suit, *&c.* Actio accrevit.

Declaration in debt on the ſtat. 2 E. 6. c. 13. *for not ſetting forth tithes.* C. B.

Weſtmorland, to wit, *J. S.* late of *N.* in the county aforeſaid, husbandman, was ſummoned to anſwer *J. D.* Eſq; of a plea, that he render to him 15 *l.* which he oweth to him, and unjuſtly detaineth from him, &c. *And* whereupon the ſaid *J.* by *R. S.* his attorney ſaith, that *whereas* the ſaid *J.* for two years laſt paſt and more, was and yet is farmer and tenant of all the tithes of corn and grain in the rectory of *K.* in the ſaid county, belonging or appertaining to the ſaid rectory, yearly growing, coming or renewing within the ſaid pariſh of *K.* aforeſaid, and the bounds and limits and tithable places of the ſaid pariſh: *And whereas* the ſaid *J. S.* on the 30th day of *September* in the year of our Lord 1732. and from thence hitherto was the farmer, occupier and poſſeſſor of twenty acres of land, with the appurtenances, within the rectory and pariſh aforeſaid, and the bounds, limits, and tithable places of the ſame pariſh, the tithes of corn and grain yearly growing, coming or renewing; of, in and from which ſaid twenty acres of land, within forty years next before the ſtatute made in the parliament of the lord *Edw.* VI. late king of *E.* held at *W.* in the 2d year of his reign, and provided for and concerning the payment of tithes, were of right yielded, and payable and paid to the owner of the rectory aforeſaid, or his farmer of the ſaid rectory or of the tithes thereof for the time being, in their proper kinds. *And* the ſaid *J.* being ſo farmer, occupier and poſſeſſor of the ſaid twenty acres

Plaintiff farmer of the tithes.

Defendant occupier of lands.

Sows the land with corn.

acres of land, with the appurtenances; and the ſaid *J.* being farmer of the ſaid tithes as aforeſaid, the ſaid *J.* afterwards, to wit, the 1ſt day of *April* in the year of our Lord 1733. ſowed the ſaid twenty acres of land with oats, and at the time of corn-harveſt then next following, to wit, the 20th day of *September* in the year of our Lord 1733. did cut and reap all the oats growing upon the ſaid twenty acres of land, the tithes of which ſaid oats ſo cut and reaped by him, did belong to the ſaid *J.* as ſuch farmer of the tithes aforeſaid, and of right ought to have been yielded and paid to him: *Nevertheleſs* the ſaid *J.* not regarding the ſtatute aforeſaid, nor dreading the penalty therein contained, did not divide, ſever or ſet out the tenth part of the oats aforeſaid, or any part thereof, for the tithes thereof, nor did agree with the ſaid *J.* being farmer of the ſaid tithes as aforeſaid, for the tithes of the ſaid oats; but afterwards, to wit, the 28th day of *September* in the year of our Lord 1733. aboveſaid, at the pariſh of *K.* aforeſaid, did take and carry away all the ſaid oats, coming in and upon the ſaid twenty acres of land, by him cut and reaped as aforeſaid, from the place where they grew and ought to have been tithed, without ſetting forth the tithes thereof, and without any compoſition or agreement for the tithes thereof, had or made with the ſaid *J.* being then farmer of the tithes as aforeſaid, againſt the form of the ſtatute aforeſaid. *And* the ſaid *J.* in fact ſaith, that the ſame tithes or tenth

Reaps it.

Does not ſet forth the tithes.

Value of the tithes.

part of the ſaid oates ſo as aforeſaid taken and carried away, at the time of ſuch taking and carrying away thereof, were reaſonably worth 5 *l.* Wherefore an action accrued to the ſaid *J.* to demand and have of the ſaid *J.* the aforeſaid 15 *l.* for the treble value of the ſaid tithes ſo taken and carried away by the ſaid *J.* againſt the form of the ſtatute aforeſaid: *Nevertheleſs* the ſaid *J.* (altho' often requeſted) hath not rendered the aforeſaid 15 *l.* or any part thereof, to the ſaid *J.* but hath hitherto altogether refuſed, and ſtill doth refuſe, to render the ſame to him, to the damage of the ſaid *J.* of 10 *l.* And thereof he bringeth ſuit, *&c.*

Declaration in debt on the ſtat. of 2 & 3 E. 6. c. 13. *for not ſetting forth tithes.*

Plaintiff farmer of the rectory.

Gloucesterſhire, to wit, *J. V.* farmer of the rectory of *M.* in the county aforeſaid, complaineth of *S. H.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 6 *l.* of lawful money of *England*, which he oweth him, and unjuſtly detaineth; *For that*, to wit, that *whereas* the ſaid *J.* on the 25th day of *March* in the 2d year of the reign of our ſovereign lord *James* II. now king of *England*, &c. and from that time continually hitherto, hath been and ſtill is farmer of the rectory impropriate of *M.* with the appurtenances, in the county aforeſaid, and of all and ſingular the tithes to the ſaid rectory in any manner belonging and appertaining, yearly coming, growing, renewing or happening within the ſaid pariſh of *M.* in the county aforeſaid, and the bounds, limits, and tithable places of the ſaid pariſh. *And* the ſaid *S.* on the 25th day of *March* in the

Defendant occupier of, &c.

2d year aforesaid, and continually afterwards, from that time until the exhibiting of this bill, has been and now is the occupier and possessor of a close of meadow called *Foxwell's Wood*, containing by estimation thirteen acres, and of two acres of arable land in the north-field of *M.* aforesaid, and within the parish of *M.* aforesaid in the county aforesaid, and the bounds, limits, and tithable places of the said parish; *The* tithes of the grain and hay yearly growing, coming and renewing out of and from which said close of pasture and two acres of land, for forty years next before the making a certain act made in the parliament of *Edward* VI. late king, held at *W.* in the county of *M.* in the 2d year of his reign, made and provided for the true payment of tithes in their proper kinds and species, were of right due and payable to the rector of the said rectory, or to his farmer or deputy of the said rectory for the time being. *And* the said *J.* so as aforesaid, for the whole time aforesaid being occupier and possessor of the said close of meadow and two acres of land, and the said *J.* being so as aforesaid farmer of the said rectory, the said *S.* afterwards, to wit, on the said 25th day of *March* in the said year aforesaid, ploughed and sowed the said two acres of land with wheat; and afterwards, to wit, on the 6th day of *September* in the said 2d year of the reign of our said lord the present king, mowed and made into hay all the grass then growing in and upon the said close of pasture, and cut down

The tithes payable for forty years before the statute.

Defendant plows the land and reaps the corn, &c.

all the wheat then growing in and upon the ſaid two acres of land; the tithes of which ſaid hay and wheat as aforeſaid growing and coming out of and from the ſaid cloſe of meadow and the ſaid two acres of land, of right belonged to the ſaid *J.* as farmer of the ſaid rectory, and ought of right to have been rendered and paid to him. *Yet* the ſaid *S.* being a ſubject of our ſaid lord the preſent king of this kingdom of *England*, no ways regarding the ſaid ſtatute, nor any ways fearing the penalties contained in the ſame, did not divide, ſeparate, render and pay the tenth part of the ſaid wheat and hay, or any parcel thereof, for the tithes of the ſame, nor any ways compounded or agreed with the ſaid *J.* being ſo as aforeſaid farmer of the ſaid rectory, for the tithes of the ſame, or of any parcel thereof; but the ſaid *S.* afterwards, to wit, on the 10th day of *October* in the 2d year aforeſaid, then and there took and carried away all the grain and hay ſo as aforeſaid growing and coming, and mowed in that year upon the ſaid cloſe of meadow and two acres of land, from the ſaid places where the ſaid hay and wheat grew, without any putting out of the tenth part of the ſame, and without any compoſition or agreement had or made with the ſaid *J.* for the tithes of the ſame, which tithes were then worth 40*s.* of lawful money of *England*; *Whereby* an action accrued to the ſaid *J.* to demand and have of the ſaid *S.* the 6*l.* aforeſaid, being treble the value of the tithes of the ſaid wheat and hay taken and carried away

Does not ſet forth the tithes.

Per quod actio accrevit.

away by the ſaid *S.* as aforeſaid, contrary to the form of the ſaid ſtatute: *Yet* the ſaid *S.* altho often requeſted, *&c.* hath not yet paid the ſaid 6 *l.* to the ſaid *J.* But, *&c.*

Suſſex, to wit. *S. A.* Gent. who ſueth in this behalf as well for our lord the king as for himſelf, complaineth of *T. F.* the elder, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to our ſaid lord the king, and to the ſaid *S. A.* who as well, *&c.* 200 *l.* of lawful money of *England*, which he oweth them, and unjuſtly detaineth; for that, *that* the ſaid *T. F.* on the 20th day of *May* in the 34th year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. being above the age of ſixteen years, and then and from thence continually afterwards, for the ſpace of ten months thence next enſuing, an inhabitant, and dwelling within this kingdom of *England*, to wit, at the pariſh of *All-Saints* in *Lewes* in the county aforeſaid, did not repair, nor endeavour to repair to his pariſh-church of *All-Saints* in *Lewes* aforeſaid, nor to any other church, chapel, or uſual place of common prayer and preaching, or other divine ſervice there uſed and adminiſtred according to the form of the ſtatute in ſuch caſe made and provided, but for the whole time aforeſaid voluntarily and obſtinately, without any lawful or reaſonable cauſe or excuſe, did forbear from the ſame, contrary to the form of the ſtatute in ſuch caſe made and provided: *Whereby* an action accrued, as well

Declaration in debt Qui tam, &c. *on the ſtat.* 29 Car. 2. c. 7. *for not going to church.* 1 Bro. 91. 1 Salk. 30. 373.

Actio accrevit.

well to our ſaid lord the king, as to the ſaid *S.* who as well, *&c.* to demand and have of the ſaid *T.* the ſaid 200 *l.* to wit, 20 *l.* for every month of the ſaid ten months in which the ſaid *T.* contrary to the form of the ſaid ſtatute abſented himſelf as aforeſaid from church, chapel, or place of common prayer and preaching, or other divine ſervice there: *Yet* the ſaid *T.* altho' often requeſted, *&c.* did not pay the ſaid 200 *l.* to our ſaid lord the king and the ſaid *S.* who as well, *&c.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay them the ſame, to the damage of the ſaid *S.* of 40 *l.* And thereof as well for our ſaid lord the king as for himſelf he bringeth ſuit, *&c.*

Plea, Nil debet.

And the ſaid *T. F.* by —— his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he doth not owe to our ſaid lord the king and the ſaid *S.* who as well, *&c.* the ſaid 200 *l.* nor any part thereof, in manner and form as the ſaid *S.* who as well, *&c.* above complaineth againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *S.* who as well, *&c.* doth ſo likewiſe. *Therefore* let a jury thereupon come before our lord the king at *W.* on *Wedneſday* next after three weeks of the *Holy Trinity*; And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue.

Venire *awarded.*

Declaration in debt againſt a gaoler, on the Habeas corpus

Surrey, to wit, *J. F.* Gent. complaineth of *W. L.* Eſq; marſhal of the *Marſhalſea* of the court of our lord and lady the preſent king

king and queen, before the ſaid king and queen preſent here in court, in his proper perſon, of a plea, that he render to him 100 *l.* of lawful money of *England*, which he oweth him, and unjuſtly detaineth; for that, to wit, *That whereas* after the 1ſt day of *July* in the year of our Lord 1679. he the ſaid *J. F.* in vacation-time and out of term, to wit, on the 20th day of *March* in the 2d year of the reign of our lord *William* and lady *Mary*, now king and queen of *England*, &c. at the pariſh of *St. George* in *Southwark* in the county of *Surrey*, was taken and detained in priſon by the ſaid *W. L.* without any warrant or commitment for treaſon or felony expreſſed in the ſame: And alſo whereas afterwards, to wit, on the 29th day of *March* in the ſaid 2d year of the reign of our ſaid lord the king and lady the queen, at the pariſh aforeſaid in the county of *Surrey* aforeſaid, the ſaid *J. F.* demanded of the ſaid *W. L.* a true copy of the warrant of commitment and detainer of the ſaid *J. F.* in the ſaid priſon by him the ſaid *W. L.* *Yet* the ſaid *W. L.* altho' often requeſted, within the ſpace of ſix hours next after the ſaid demand, did not deliver a copy of the warrant of commitment and detainer of the ſaid *J. F.* in the cuſtody of the ſaid *W. L.* but he intirely neglected and omitted to deliver the ſame to him, contrary to the form of the ſtatute in ſuch caſe lately made and provided; whereby and by force of the ſaid ſtatute the ſaid *W. L.* has forfeited the ſum of 100 *l.* Whereby by force of the ſaid ſtatute an action

act, 31 Car. 2. c. 2. *for denying a copy of a commitment.*

on accrued to the ſaid *J. F.* being the party aggrieved, to demand and have of the ſaid *W. L.* the ſaid 100 *l.* *Yet* the ſaid *W.* altho' often requeſted, *&c.* hath not yet paid the ſaid 100 *l.* or any part thereof, to the ſaid *J.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J.* of 10 *l.* And thereof he bringeth ſuit, *&c.*

Memorandum *of a declaration of a precedent term.*

Somerſetſhire, to wit: *Be it it remembered*, that heretofore, to wit, in the term of *Eaſter* in the 1ſt year of the reign of our lord the preſent king, before our lord the king at *W. E. P.* Eſq; came by *H. G.* his attorney, and brought here into the court of our ſaid lord the king then there his certain bill againſt *T. S.* bailiff of the borough of *I.* in the county aforeſaid, in the cuſtody of the marſhal, *&c.* of a plea of debt; and there are pledges for proſecuting, to wit, *J. D.* and *R. R.* which ſaid bill followeth in theſe words, to wit, *Somerſetſhire*, to wit, *E. P.* Eſq; complaineth of *T. S.* bailiff of the borough of *I.* in the county aforeſaid, in the cuſtody of marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to him 500 *l.* which he oweth him, and unjuſtly detaineth; for that, to wit, that *whereas* the town of *I.* in the county aforeſaid is an antient borough, and that two burgeſſes of the ſame borough to come to every parliament of our lord the king and his predeceſſors, kings and queens of *England*, from the time to the contrary whereof the memory of man is not, have been

Declaration in debt on ſtatute 7 & 8 W. 3. c. 25. §. 6. againſt a returning officer, for refuſing a copy of a poll.

Cuſtom to chuſe members.

been choſen and uſed to be choſen by the burgeſſes and inhabitants of the ſaid borough, having votes in that behalf: *And whereas* a certain writ of our lord the preſent king, iſſued out of his Chancery at *W.* in the county of *M.* on the 7th day of *January* in the 1ſt year of his reign, bearing date the ſame day and year, directed to the ſheriff of the ſaid county of *S.* by which ſaid writ our ſaid lord the king reciting, that whereas our ſaid lord the king, by the advice and aſſent of his council, for certain arduous and urgent affairs concerning our ſaid lord the king, the ſtate and defence of his kingdom of *Great Britain* and the church, had ordered a certain parliament to be held at his city of *W.* on the 17th day of *March* then next enſuing, and there to have conference and treat with the prelates, great men and peers of his ſaid kingdom, did command and ſtrictly injoin the then ſheriff of the county of *S.* that proclamation being made in his next county-court to be holden after the receipt of the ſaid writ, at the time and place aforeſaid, two knights girt with ſwords, of the moſt fit and diſcreet of the ſaid county, and of every city of the ſaid county two citizens, and of every borough two burgeſſes of the moſt diſcreet and ſufficient, freely and indifferently by them who at ſuch proclamation ſhould be preſent, the ſaid ſheriff ſhould cauſe to be elected, according to the form of the ſtatute in that caſe made and provided, and the names of ſuch knights, citizens and burgeſſes ſo elected, in certain indentures there-

Writ of election.

thereupon to be made between the ſaid ſheriff and them who ſhould be preſent at ſuch election to be inſerted, whether the perſon ſo elected ſhould be preſent or abſent, and them at the ſaid day and place ſhould cauſe to come; ſo that the ſaid knights full and ſufficient power for themſelves and the commonalty of the ſaid county, and the ſaid citizens and burgeſſes for themſelves and the commonalty of the ſaid cities and boroughs ſeverally from them might have, to do and conſent to thoſe things which then and there by the common council of his ſaid majeſty's kingdom (with God's aſſiſtance) ſhould happen to be ordained upon the affairs aforeſaid; ſo that through defect of ſuch power, or by an improvident election of ſuch knights, citizens and burgeſſes, the ſaid affairs might not in any wiſe remain unprovided for; Willing nevertheleſs, that neither the ſaid ſheriff, nor any other ſheriff of his ſaid majeſty's kingdom aforeſaid ſhould in any wiſe be elected; and the ſaid election in full county of the ſame ſheriff ſo made, diſtinctly and openly under the ſeal of the ſaid ſheriff, and the ſeals of them who ſhould be preſent at ſuch election, at ſuch election the ſaid ſheriff ſhould certify to our ſaid lord the king, in his Chancery, at the day and place aforeſaid, without delay, remitting to our ſaid lord the king one part of the aforeſaid indentures ſewed to the ſaid indentures together with the ſaid writ, as by the ſaid writ now remaining in the court of Chancery of our ſaid lord the king at *W.* aforeſaid

more

more fully appears: *Which* ſaid writ afterwards, to wit, on the 26th day of *January* in the ſaid 1ſt year of the reign of our ſaid lord the preſent king, at *I.* aforeſaid, in the ſaid county of *S.* was delivered to one *J. T.* Eſq; then ſheriff of the ſaid county of *S.* to be executed in form aforeſaid. *By virtue* of which ſaid writ the ſaid ſheriff afterwards, to wit, on the ſaid 26th day of *January* in the firſt year aforeſaid, there made his certain precept in writing, ſealed with the ſeal of his ſaid office of ſheriff, directed to the bailiff of the ſaid borough of *I.* in the county aforeſaid, of and for the electing within that borough two burgeſſes of the ſame borough, according to the form and effect of the ſaid writ: *Which* ſaid precept afterwards, to wit, on the ſaid 26th day of *January* in the 1ſt year aforeſaid, at *I.* aforeſaid, was delivered to the ſaid *T. S.* then bailiff of the ſaid borough of *I.* (to which ſaid bailiff the execution of the ſaid precept belonged) to be executed in form of law. *By* pretext of which ſaid precept afterwards, to wit, on the 2d day of *February* in the ſaid 1ſt year of the reign of our lord the preſent king, at *I.* aforeſaid, the election of two burgeſſes for the ſame borough of *I.* aforeſaid, to come to the ſaid parliament, according to the form and effect of the ſaid writ, came on. *And* thereupon the ſaid *E. P.* and one Sir *J. B.* Knt. *W. B.* Eſq; and *J. H.* Eſq; were and ſtood candidates at the ſaid election, that of them two might be choſen to be burgeſſes of parliament for the ſame borough; and many

Precept to a defendant, as bailiff of the borough.

The election.

many burgeſſes of the ſaid borough were preſent at the ſaid election, and having votes in that behalf, then and there gave their votes for the ſaid *E. P.* to be one of the ſaid two burgeſſes of parliament for the ſaid borough; and divers burgeſſes of the ſaid borough alſo preſent at the ſaid election, then and there gave their votes for the ſaid Sir *J. B.* to be another of the ſaid two burgeſſes of parliament for the ſaid borough; and divers other burgeſſes of the ſaid borough alſo preſent at the ſaid election, then and there gave their votes for the ſaid *W. B.* and *J. H.* to be the two burgeſſes of parliament for the ſaid borough. *So* that for the making the ſaid election plain, a poll of the voters at the ſaid election being required and demanded by ſome of them, was then and there had, and taken in writing before the ſaid *T. S.* then bailiff of the ſaid borough as aforeſaid; and he the ſaid *T. S.* then and there took and had the ſaid poll. *And* after the poll of voters of, in and for the ſaid election, taken, had and ended, to wit, on the 10th day of *February* in the firſt year aforeſaid, at *I.* aforeſaid, the ſaid *E. P.* requeſted the ſaid *T. S.* then bailiff of the ſaid borough as aforeſaid, to deliver to the ſaid *E. P.* a copy of the poll of voters found at the ſaid election, and then and there was ready and offered to pay to the ſaid *T. S.* any reaſonable ſum of money for writing thereof, which he ſhould demand for the ſame: *Yet* the ſaid *T. S.* bailiff of the ſaid borough as aforeſaid, (to which ſaid bailiff the

Poll taken.

Copy demanded.

Refuſed.

the execution of the ſaid precept for electing the ſaid burgeſſes then belonged) no ways regarding the duty of his office of bailiff of the ſaid borough in this behalf, and the ſtatute in ſuch caſe made and provided, nor any ways fearing the penalty contained in the ſaid ſtatute, did not then or afterwards deliver to the ſaid *E. P.* a copy of the poll of voters at the ſaid election for the ſaid borough, but voluntarily then and afterwards intirely refuſed to deliver the ſame to him, contrary to the ſaid ſtatute made and provided: *Whereby* an action accrued to the ſaid *E. P.* to demand and have of the ſaid *T. S.* the ſaid 500 *l.* *Yet* the ſaid *T. S.* altho' often requeſted, hath not yet paid the ſaid 500 *l.* to the ſaid *E. P.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore he ſaith that he is injured, and hath damage to the value of 40 *l.* And thereof he bringeth ſuit, *&c.* *Actio accrevit.*

And now at this day, to wit, *Friday* next after the morrow of the *Holy Trinity*, in the 2d year of the reign of our ſaid lord the preſent king, in this ſame term, until which day the ſaid *T.* had leave to imparl to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *W.* cometh as well the ſaid *E.* by his attorney aforeſaid, as the ſaid *T.* by *J. L.* his attorney. *And* the ſaid *T.* defendeth the force and injury when, *&c.* and ſaith that he doth not owe to the ſaid *E.* the ſaid 500 *l.* or any part thereof, in manner and form as the ſaid *E.* hath above declared againſt him; And of this he putteth himſelf *Imparlance.* *Non debet.*

Iſſue. himſelf upon the country: *And* the ſaid *E.*
Venire. doth ſo likewiſe, *&c. Therefore* let a jury come thereupon before our lord the kind at *W.* on *Wedneſday* next after three weeks of the *Holy Trinity*; And who neither, *&c.* To take cognizance, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties
Vic. non miſit breve. aforeſaid at the ſame place, *&c. At which day* the ſaid parties came by their attornies aforeſaid before our lord the king at *W.* and the ſheriff did not return the ſaid writ:
Alias venire. *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on *Wedneſday* next after fifteen days of St. *Martin*; And who neither, *&c.* To take cognizance, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the
Vic. non miſit breve. ſame place, *&c. At which day* the ſaid parties came by their attornies aforeſaid before our lord the king at *W.* and the ſheriff did
Alias venire. not return the ſaid writ. *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on *Tueſday* next after the octave of the purification of the bleſſed virgin *Mary*; And who neither, *&c.* To take cognizance, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties afore-
Proceſs continued. ſaid at the ſame place. *Afterwards* the proceſs being continued between the parties
Niſi Prius. aforeſaid of the plea aforeſaid, by the jury being reſpited between them, before our lord the king at *W.* until *Wedneſday* next after fifteen days of *Eaſter* thence next enſuing, unleſs the juſtices of our lord the king aſſigned to take the aſſizes in the county afore-

ſaid

ſaid ſhall firſt come on *Monday* the 18th day of *March* at the caſtle of *T.* in the county aforeſaid, by form of the ſtatute, *&c.* for default of the jurors, *&c.* *At which* ſaid *Wedneſday* next after fifteen days of *Eaſter*, before our lord the king at *W.* the ſaid *E.* came by his attorney aforeſaid; and the ſaid juſtices of our lord the king aſſigned to take the aſſizes, *&c.* before whom, *&c.* ſent here their record before them, had in theſe words: *Afterwards*, on the day and at the place within contained, before *R. P.* eſq; one of the barons of the Exchequer of our lord the king, and Sir *R. E.* knt. one of the juſtices of our lord the king aſſigned to hold pleas before the king himſelf, juſtices of our lord the king aſſigned to take the aſſizes in the county of *S.* by form of the ſtatute, *&c.* come as well the within named *E. P.* eſq; as the within-written *T. S.* bailiff of the borough of *I.* within written, in the county aforeſaid, by their attornies within contained, and the jurors of the jury, whereof mention is within made, being demanded, ſome of them, to wit, *R. C.* and *R. C.* come and are ſworn upon that jury; and becauſe the reſidue of the jurors of the ſame jury do not appear, *therefore* others of thoſe ſtanding about, hereunto choſen by the ſheriff of the county aforeſaid, at the requeſt of the ſaid *E. P.* and by the command of the ſaid juſtices, are added anew, whoſe names are affiled in the within written panel, according to the form of the ſtatute in ſuch caſe made and provided; and the jurors ſo added anew,

Poſtea.

Tales.

anew, to wit, *J. S. W. E. J. S. J. C. L. D. H. P. N. H. R. L. J. D.* and *H. T.* being alſo demanded, come, who together with the ſaid other jurors firſt hereunto impanelled and ſworn, being choſen, tried and ſworn to ſpeak the truth of the within contained, ſay upon their oath, *that* the ſaid *T. S.* oweth to the ſaid *E. P.* the within mentioned 500*l.* and every part thereof, in manner and form as the ſaid *E. P.* hath within declared againſt him: And they aſſeſs the damages of the ſaid *E. P.* by occaſion of the detaining the within written debt, beſides his coſts and charges by him about his ſuit in this behalf expended to 2 *d.* and for thoſe coſts and charges to 40 *s.* *Therefore* it is conſidered, that the ſaid *E. P.* recover againſt the ſaid *T. S.* his ſaid debt, and the damages aforeſaid aſſeſſed by the ſaid jury in form aforeſaid; and alſo 18 *l.* for the increaſe of his ſaid coſts and charges, adjudged by the court of our ſaid lord the king now here, to the ſaid *E. P.* by his aſſent: Which ſaid damages amount in the whole to 20 *l.* and 2 *d.* And the ſaid *T. S.* in mercy, *&c.*

Verdict for the plaintiff.

Judgment.

Declaration in debt on the ſtatute 9 Ann. *for preventing exceſſive and deceitful gaming.*

Andrews 67.

Middleſex, to wit, *W. N.* complaineth of *T. B.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 16 *l.* of lawful money of *Great Britain*, which he oweth him and unjuſtly detaineth, for that, to wit, that whereas the ſaid *T. B.* on the 26th day of *May* in the 11th year of the reign of our ſovereign lady *Anne* now queen of *Great Britain*, *&c.* at *W.* in the county aforeſaid, was indebted to the ſaid *W. N.* in the ſaid 16 *l.* for

r ſo much money after the 1ſt day of *May* the year of our Lord 1711. had and re-ived by the ſaid *T. B.* to the uſe of the ſaid *N.* whereby an action accrued to the ſaid *N.* to demand and have of the ſaid *T. B.* e ſaid 16 *l.* according to the form of the atute made and provided in the parliament our ſaid ſovereign lady the preſent queen, ld at *W.* in the county of *M.* on the 25th y of *November* in the year of our Lord 10. intitled, *An Act for the better preventg of exceſſive and deceitful Gaming.* *Yet* the d *T.* although often requeſted, hath not t rendered the ſaid 16 *l.* to the ſaid *W. N.* t hath hitherto refuſed, and ſtill doth reſe to render the ſame to him. Wherefore faith he is injured, and hath damage to e value of 20 *l.* and thereof he bringeth it, *&c.*

Nil debet *was pleaded, and the plaintiff covered a verdict, and thereupon the money as paid.*

Elſewhere, as it appears of the term of *Michael* in the 16th year of the reign of ng *Geo.* II. in the 631 *Roll*, it is thus con-ined: *Kent*, to wit, *E. B.* late of *H.* in e ſaid county, gent. and *P. B.* late of the me place, gent. have been ſummoned to nſwer to *J.* earl of *W.* who ſueth as well r himſelf as for the poor of the pariſh of *V.* in the ſaid county, in a plea, that they render to them 40 *l.* which they owe to hem, and unjuſtly detain, *&c.* *And* whereupon the ſaid *J.* earl of *W.* who ſueth as well for himſelf as the poor of the ſaid pa-

Alias prout patet.

Declaration in debt on the ſtatute 9 Ann. c. 25. *for taking partridges in the night.* C. B.

riſh in this reſpect, by *F. M.* his attorney ſaith that the ſaid *E.* and *P.* after the 1ſt day of *May* in the year of our Lord 1711. to wit, on the 16th day of *Auguſt* in the year of our Lord 1742. in the night-time of the day, at the pariſh aforeſaid, did take certain partridges, to wit, eight partridges, contrary to the ſtatute in ſuch caſe lately made and provided; by reaſon whereof, by force of the ſtatute in ſuch caſe lately made and provided, an action has accrued to the ſaid *J.* earl of *W.* who ſueth as well, *&c.* to demand and have of the ſaid *E.* and *P.* the ſaid 40*l.* to wit, 5*l.* for each of the ſaid eight partridges ſo taken by them as aforeſaid, to himſelf and the poor of the ſaid pariſh: *Nevertheleſs* the ſaid *E.* and *P.* although often requeſted, have not rendered to the ſaid *J.* earl of *W.* and the poor of the ſaid pariſh the ſaid 40*l.* or any part thereof, but have wholly refuſed, and ſtill refuſe to render the ſame to them; Whereby the ſaid *J.* earl of *W.* who as well, *&c.* ſaith that he is injured, and hath damage to the value of 10*l.* And thereof as well for himſelf as the poor of the ſaid pariſh, he bringeth ſuit, *&c.*

Imparlance. *And* the ſaid *E.* and *P.* by *S. E.* their attorney come and pray leave to imparl until the octave of St. *Hilary*; and they have it, *&c.* The ſame day is given to the ſaid *J.* earl of *W.* here, *&c.* And now here at the day, to wit, on the octave of St. *Hilary* in the ſame term of St. *Hilary*, cometh as well the ſaid earl, who as well, *&c.* as the ſaid *E.* and *P.* by their attorney aforeſaid.

Plea, Nil debent.

ſaid *E.* and *P.* defend the force and
ury when, *&c.* and ſay that they do not
e the ſaid 40*l.* as in and by the ſaid de-
ration is above ſuppoſed; and hereupon
y put themſelves upon the country: *And* *Iſſue.*
ſaid earl doth ſo likewiſe. *Therefore* the
riff is commanded, *&c.*

Kent, to wit, *E. L.* late of, *&c.* was ſum- *Declaration in*
ned to anſwer to the poor of the pariſh of *debt on the ſta-*
in the county aforeſaid, and to Sir *J. S.* *tute, for keep-*
. who ſueth in this particular as well for *ing a grey-*
ſelf as for the ſaid poor of the ſaid pa- *hound and kill-*
of *E.* aforeſaid, of a plea, that he ren- *ing a hare,*
to the ſaid poor and the ſaid *J. S.* who *not being a*
h as aforeſaid, 10*l.* of lawful money of *perſon qua-*
at Britain, which he oweth to and un- *lified.* C. B.
y detaineth from, *&c. And* whereupon the Bluetv. Needs,
Sir *J.* who ſues as aforeſaid by *H. C.* his Comy. 522.
rney ſaith, *That* the ſaid *E.* on the 30th
of *March* 1736. at and in the pariſh of
foreſaid, did keep a certain greyhound
he deſtruction of the game of this king-
, he the ſaid *E.* then not being a perſon
ified by the laws of this realm to keep a
hound for the deſtruction of the game,
nſt the form of the ſtatute in ſuch caſe
e and provided: *Whereby* and by force
he ſtatute in ſuch caſe lately made and
ided, an action hath accrued to the poor
e pariſh aforeſaid, and to the ſaid Sir *J.*
ſues as aforeſaid, to demand and have
he ſaid *E.* for his ſaid offence 5*l.* parcel
he ſaid 10*l.* *And* the ſaid Sir *J.* who *Second count.*
as aforeſaid, further ſaith, *That* the ſaid
n the ſaid 30th day of *March* in the

year aforeſaid, in the ſaid pariſh of *E.* in the county aforeſaid, did with a certain grey-hound kill one hare, he the ſaid *E.* then not being a perſon qualified to kill game, againſt the form of the ſtatute in ſuch caſe lately made and provided: *Whereby*, and by force of the ſtatutes in ſuch caſe lately made and provided, an action hath accrued to the poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid laſt mentioned offence, 5*l.* reſidue of the ſaid 10*l.* the ſaid *E.* (altho' often requeſted) hath not yet paid the ſaid 10*l.* or any part thereof, to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, or to either of them; but to pay the ſame to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, hitherto wholly hath, and ſtill doth refuſe, to the ſaid Sir *J.* who ſueth as aforeſaid, his damage of 10*l.* And thereof as well for the ſaid poor as for himſelf he bringeth ſuit, &c.

Plea, Nil debet.

And the ſaid *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury when, &c. and ſaith that he doth not owe to the ſaid Sir *J.* who ſueth as well, &c. the ſaid ſum of 10*l.* or any part thereof, in manner and form as the ſaid Sir *J.* who ſueth as well, &c. above thereof complaineth againſt him; and of this he putteth himſelf

Iſſue.

upon the country: *And* the ſaid Sir *J.* who ſueth as aforeſaid, doth likewiſe the ſame. *Therefore*, &c.

Judgment for not entering the iſſue.

And the ſaid Sir *J. S.* altho' ſolemnly called, came not, nor hath entered his ſaid iſſue

iſſue, nor hath further proſecuted his ſaid writ: *Therefore* he and his pledges of proſecution are thereupon amerced, *&c.* And the names of the pledges of the ſaid Sir *J.* are, *&c.* And that the ſaid *E.* depart without day, *&c.* It is alſo conſidered, that the ſaid *E.* do recover againſt the aforeſaid Sir *J.* his damages by reaſon of the premiſes, to 3*l.* 16*s.* 8*d.* to the ſaid *E.* by the diſcretion of the juſtices here adjudged at his requeſt for his coſts and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided.

Middleſex, to wit, *J. L.* late of, *&c.* was ſummoned to anſwer *W. R.* who ſueth as well for our lord the king as for himſelf in this behalf, in a plea, that he render to our ſaid lord the king and the aforeſaid *W.* the ſum of 101*l.* 11*s.* of lawful money of *Great Britain*, which to them he oweth and unjuſtly detaineth, *&c.* *And* whereupon the ſaid *W.* who ſueth as well for our ſaid lord the king as for himſelf, by *J. B.* his attorney complaineth, *that* the ſaid *J. L.* after the 29th day of *September* in the year of our Lord 1714. to wit, on the 22d day of *June* in the year of our Lord 1736. at the pariſh of *St. Martin in the Fields* in the county aforeſaid, upon a certain contract made after the ſaid 29th day of *September*, to wit, on the 22d day of *June* in the year of our Lord 1733. at the pariſh aforeſaid in the county aforeſaid, between the ſaid *J.* and one *M. M.* took, accepted and received of and from the ſaid *M.* the ſum of 4*l.* 14*s.* 6*d.*

Declaration in debt on the ſtatute of uſury. C. B.

6 *d.* by way of corrupt bargain for giving day of payment to her the ſaid *M.* from the ſaid 22d day of *June* in the year of our Lord 1733. to the 22d day of *June* in the year of our Lord 1736. of the ſum of 10*l.* 10*s.* lent on the 22d day of *June* in the year of our Lord 1733. at the pariſh aforeſaid in the county aforeſaid, by the ſaid *J.* to the ſaid *M.* Which ſaid ſum of 4*l.* 14*s.* and 6*d.* ſo took, accepted and received by the ſaid *J.* of the ſaid *M.* as aforeſaid, is above the rate of 5*l.* for the forbearing of 100*l.* for one year, and is againſt the form of the ſtatute in ſuch caſe made and provided: *Whereby* an action hath accrued to the ſaid *W.* who ſueth as well for our lord the king as himſelf, to demand and have of and from the ſaid *J.* the ſum of 31*l.* 10*s.* part of the ſaid 101*l.* 11*s.* being the treble value of the ſaid ſum of 10*l.* 10*s.* of the ſaid *J.* by him lent to the ſaid *M.* as aforeſaid; [*other like counts for the remainder of the* 101*l.* 11*s.*]

Eaſter Term 29 *Geo.* 2.

Declaration in debt for 5*l. penalty on ſtat.* 28 Geo. 2. c. 17. *for preſervation of the publick high-ways.* B. R.

Warwickſhire, to wit, *J. G.* complaineth of *T. B.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to him five pounds of lawful money of *Great Britain*, which he oweth to him and unjuſtly detaineth, *&c.* for that whereas the ſaid *Thomas* on the 26th day of *April* in the year of our Lord 1756. at *Alceſter* in the ſaid county,

county, was indebted to the ſaid *John* in the ſaid ſum of five pounds, being forfeited by an Act, intituled, An Act to amend an Act made in the twenty-ſixth year of the reign of his preſent majeſty, intituled, *An Act for the amendment and preſervation of the publick Highways and Turnpike Roads of this Kingdom, and for the more effectual execution of the Laws relating thereto*; whereby an action hath accrued to the ſaid *John*, to demand and have of the ſaid *Thomas* the ſaid five pounds above demanded: *Neverthelefs* the ſaid *Thomas*, although often required, hath not rendered to the ſaid *John* the ſaid five pounds, or any part thereof, but hath hitherto altogether refuſed and ſtill doth refuſe to render the ſame to him; whereupon the ſaid *John* ſaith, that he is injured and hath damage to the value of ten pounds; and therefore he bringeth this ſuit, *&c.*

W. for plaintiff / *for defendant* { *pledges to* / *proſecute* } *John Doe* and *Richard Roe.*

Middleſex, to wit, *W. C.* complaineth of *C. S.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 23*l.* and 2*d.* of lawful money of *England*, which he oweth him and unjuſtly detaineth; *for that*, to wit, that *whereas* the ſaid *W. C.* heretofore, to wit, in the term of *Eaſter* in the 4th year of the reign of our ſovereign lady *Anne* now queen of *England*, &c. in the court of our ſaid lady the queen, before the queen herſelf, the ſaid court then being at

Declaration in debt on a judgment after verdict.

W.

W. in the ſaid county of *M.* by the judgment of the ſaid court recovered againſt the ſaid *C.* by the name of *C. S.* 23*l.* and 2*d.* which in the ſaid court of our ſaid lady the queen, before the queen herſelf at *W.* aforeſaid in the ſaid county of *M.* were adjudged to the ſaid *W.* for his damages which he ſuſtained, as well by occaſion of a certain treſpaſs then lately done by the ſaid *C.* to the ſaid *W.* as for his coſts and charges by the ſaid *W.* about his ſuit in that behalf expended, whereof the ſaid *J.* is convicted, as by the record thereof remaining in the ſaid court of our ſaid lady the queen, before the queen herſelf at *W.* aforeſaid in the ſaid county of *M.* more fully appeareth: Which ſaid judgment ſtill remaineth in its full force and effect, no ways ſatisfied or reverſed; and the ſaid *W.* hath not yet ſued out his execution of the ſaid judgment recovered in form aforeſaid; *whereby* an action hath accrued to the ſaid *W.* to have and demand of the ſaid *C.* the ſaid 23*l.* and 2*d.* *Yet* the ſaid *C.* although often requeſted, *&c.* hath not yet paid the ſaid 23*l.* and 2*d.* to the ſaid *W.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore the ſaid *W.* ſaith that he is injured, and hath damage to the value of 30*l.* and thereof he bringeth ſuit, *&c.*

Declaration in debt for damages and coſts on a judgment in ejectment in C. B.

Middleſex, to wit, *J. L.* gent. complaineth of *R. C.* eſq; in the cuſtody of the marſhal of the *Marſhalſea*, &c. of a plea, that he render to him 96*l.* 4*s.* and 3*d.* which he oweth him and unjuſtly detaineth; *for that*, to

to wit, that *whereas* the ſaid *J.* in the court of our ſovereign lord *W.* III. now king of *England*, *Scotland*, *France* and *Ireland*, called the king's court in the kingdom of *Ireland*, before Sir *R. P.* knt. and his companions, then juſtices of our ſaid lord the preſent king of the bench of his kingdom of *Ireland*, in the term of St. *Hilary* in the 6th year of the reign of our ſaid lord the preſent king, by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 33 *l.* 8 *s.* and 3 *d.* which were adjudged by the ſaid court of our ſaid lord the king of his bench in the ſaid kingdom of *Ireland* to the ſaid *J.* by his aſſent, for his damages, which he had as well by occaſion of a certain treſpaſs and ejectment of farm done by the ſaid *R.* to the ſaid *J.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted; as by the record and proceſs remaining in the court of our ſaid lord the preſent king, before the king himſelf here, *to wit*, at *W.* in the county of *M.* which our ſaid lord the preſent king, for certain cauſes, cauſed to be tranſmitted into the ſame court of our ſaid lord the preſent king, before the king himſelf, more fully appeareth: Which ſaid judgment remaineth in the ſaid court of our ſaid lord the king, before the king himſelf here, *to wit*, at *W.* aforeſaid in the county of *M.* aforeſaid, in its full force and effect, no ways ſatisfied or diſcharged; and whereupon the ſaid *J.* hath not yet ſued out his execution for the ſaid damages. *Whereupon* an action

in Ireland, *for the coſts in error in* B. R. *there, and the coſts in error in* B. R. *here.*

Coſts on the judgment.

Salk. 469. 3 Salk. 144, Holt 78.

Actio accrevit.

action accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid 33*l.* 8*s.* and 3*d.* parcel of the ſaid 96*l.* 4*s.* and 3*d.* *And alſo whereas* the ſaid *J.* lately in the ſaid court of our ſaid lord the preſent king, before the ſaid king himſelf, called the king's court in his kingdom of *Ireland*, by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 18*l.* 16*s.* ſterling, which were adjudged to the ſaid *J.* for his coſts and damages which he had ſuſtained by occaſion of the delay of execution of the ſaid judgment, by pretence of proſecuting a certain writ of our ſaid lord the king for correcting errors in the ſaid judgment, and that the ſaid *J.* ſhould have his execution thereof, *&c.* as by the record and proceſs of the ſame judgment laſt mentioned, remaining in the court of our ſaid lord the preſent king, before the king himſelf here, *to wit*, at *W.* in the ſaid county of *M.* which our ſaid lord the king, for certain cauſes, cauſed to be tranſmitted into the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at *W.* in the ſaid county of *M.* more fully appeareth: Which ſaid laſt mentioned judgment alſo remaineth in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* aforeſaid, in the ſaid county of *M.* in its full force and effect, no ways ſatisfied or diſcharged; and the ſaid *J.* hath not yet ſued out his execution for the ſaid 18*l.* 16*s.* for the aforeſaid damages and coſts laſt mentioned: *Whereupon* an action alſo accrued to the ſaid *J.* to demand and have of the

Coſts on affirmance in B. R. *in* Ireland.

Actio accrevit.

the ſaid *R.* the ſaid 18*l.* 16*s.* other parcel of the ſaid 96*l.* 4*s.* and 3*d.* *And alſo whereas* the ſaid *J.* lately in the court of our ſaid lord the preſent king, before the king himſelf, to wit, in the term of St. *Hilary* in the ninth year of the reign of our ſaid lord the preſent king, the ſaid court then and ſtill being at *W.* in the ſaid county of *M.* by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 44*l.* which according to the form of the ſtatute in ſuch caſe made and provided were adjudged by the court of our ſaid lord the preſent king, before the king himſelf then and there, to wit, at *W.* in the ſaid county of *M.* to the ſaid *J. L.* for his coſts and damages which he ſuſtained by occaſion of the delay of execution of the ſaid judgment, by the pretence of proſecuting a certain other writ of our ſaid lord the king for correcting errors, and that the ſaid *J. L.* ſhould have his execution thereof, as by the record and proceſs remaining in the ſaid court of our ſaid lord the preſent king, before the king himſelf here, to wit, at *W.* in the county of *M.* aforeſaid, more fully appeareth: Which ſaid laſt mentioned judgment remaineth in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* in the county of *M.* in its full force and effect, no ways ſatisfied or diſcharged: And the ſaid *J.* hath not yet ſued out his execution for the ſaid 44*l.* for his ſaid coſts and damages laſt mentioned. *Whereupon* an action hath accrued to the ſaid *J.* to demand and have of the ſaid

Coſts on affirmance here.

Actio accrevit.

ſaid *R.* the ſaid 44*l.* reſidue of the ſaid 96*l.* 4*s.* and 3*d.* *Yet* the ſaid *R.* altho' often requeſted, *&c.* hath not yet paid the ſaid ſeveral ſums of 33*l.* 8*s.* and 3*d.* 18*l.* 16*s.* and 44*l.* amounting in the whole to 96*l.* 4*s.* and 3*d.* to the ſaid *J.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J.* of 20*l.* and thereof he bringeth ſuit, *&c.*

Plea.

As to the coſts on the judgment, Nul tiel record.

And the ſaid *R. L.* by —— his attorney cometh and defendeth the force and injury when, *&c.* *And as to* the ſaid 33*l.* 8*s.* and 3*d.* in the ſaid declaration firſt mentioned, parcel of the ſaid 96*l.* 4*s.* and 3*d.* the ſaid *R.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith that there is not any ſuch record of the recovery of the ſaid 33*l.* 8*s.* and 3*d.* againſt the ſaid *R.* as by his ſaid declaration is above ſuppoſed; and this he is ready to verify.

As to the coſts on the firſt affirmance, Nul tiel record.

And as to the ſaid 18*l.* 16*s.* in the ſaid declaration ſecondly mentioned, other parcel of the ſaid 96*l.* 4*s.* and 3*d.* the ſaid *R.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith that there is not any ſuch record of the recovery of the ſaid 18*l.* 16*s.* againſt the ſaid *R.* as by the ſaid declaration is further alſo ſuppoſed; and this he is alſo ready to verify:

As to the coſts on the laſt affirmance, demurrer.

And as to the ſaid 44*l.* in the ſaid declaration mentioned, reſidue of the ſaid 96*l.* 4*s.* and 3*d.* the ſaid *R.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he

he ſaith that the ſaid declaration, as to the ſaid 44 *l.* and the matter therein contained, are not ſufficient in law for him the ſaid *J.* to have or maintain his ſaid action thereupon againſt him for the ſame; to which ſaid declaration, as to the ſaid 44 *l.* the ſaid *R.* hath no need, and is not bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore for default of a ſufficient declaration in this behalf the ſaid *R.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action thereupon againſt him for the ſame, *&c.* *And* for cauſes of demurring in law in this behalf to the ſaid declaration, as to the ſaid 44 *l.* the ſaid *R.* according to the form of the ſtatute in ſuch caſe lately made and provided, ſheweth and demonſtrateth to the court here theſe cauſes following, to wit, that the ſaid 44 *l.* adjudged by the court of our ſaid lord the king, before the king himſelf at *W.* to the ſaid *J.* for his coſts, charges and damages, by occaſion of the delay of execution of the ſaid judgment, by pretence of proſecuting the ſaid writ of error, by the law of the land of this kingdom of *England* are not recoverable in the ſaid court of our ſaid lord the king, before the ſaid king at *W.* And that the ſaid declaration, as to the ſaid 44 *l.* is inſenſible, incertain, and wanteth form; and this the ſaid *R.* is ready to verify: Wherefore he prayeth judgment of the ſaid declaration; and that the ſaid declaration, as to the ſaid 44 *l.* may be quaſhed, *&c.*

Cauſes of demurrer, thoſe coſts not recoverable here.

And

Replication. *And* the ſaid *J.* ſaith, that he by any thing by the ſaid *R.* above alledged in pleading, ought not to be barred from having his ſaid action thereupon againſt the ſaid *R.* becauſe *as to* the ſaid plea above pleaded in bar by the ſaid *R.* as to the ſaid 33*l.* 18*s.* and 3*d.* in the ſaid declaration above firſt mentioned, parcel of the ſaid 96*l.* 4*s.* and 3*d.* the ſaid *J.* ſaith that there is ſuch record of the recovery of the ſaid 33*l.* 8*s.* and 3*d.* againſt the ſaid *R.* remaining in the ſaid court of our ſaid lord the preſent king here, before the king himſelf, to wit, at *W.* in the county of *M.* aforeſaid, as the ſaid *J.* hath above declared thereupon; and this he is ready to verify by the ſaid record, as the court of our ſaid lord the preſent king here ſhall conſider, *&c.* *And* thereupon the ſaid *J.* is bid to have the ſaid record before our ſaid lord the king at *W.* on —— next after —— at his peril: The ſame day is given to the ſaid *R.* at the ſame place, *&c.* *And as to* the ſaid plea above pleaded in bar by the ſaid *R.* as to the ſaid 18*l.* 16*s.* in the ſaid declaration ſecondly mentioned, other parcel of the ſaid 96*l.* 4*s.* and 3*d.* the ſaid *J.* alſo ſaith, that there is ſuch record of the recovery of the ſaid 18*l.* 16*s.* againſt the ſaid *R.* remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at *W.* in the ſaid county of *M.* as the ſaid *J.* hath above thereupon declared; and this he is alſo ready to verify by the ſaid record, as the court of our ſaid lord the preſent king here ſhall conſider, *&c.* *And*

Habetur tale recordum.

Day to bring in the record.

Habetur tale recordum.

upon

upon this the ſaid *J.* is bid alſo to have the ſaid record before our lord the king at *W.* on —— next after —— at his peril: The ſame day is given to the ſaid *R.* at the ſame place, *&c.* *And as to* the ſaid matter above alledged by the ſaid *R.* to quaſh the ſaid declaration of the ſaid *J.* as to the ſaid 44 *l.* in the ſaid declaration laſt mentioned, reſidue of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *J.* ſaith, that by any thing before alledged the ſaid declaration of the ſaid *J.* as to the ſaid 44 *l.* ought not to be quaſhed, becauſe he ſaith that the ſaid declaration as to the ſaid 44 *l.* and the matter therein contained, are good and ſufficient in law for him the ſaid *J.* to have and maintain his ſaid action thereupon againſt the ſaid *R.* for the ſame: Which ſaid declaration as to the ſaid 44 *l.* and the matter therein contained, the ſaid *J.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *R.* doth not anſwer to the ſaid declaration as to the ſaid 44 *l.* and hath not as yet any ways denied the ſame, the ſaid *J.* prayeth judgment, and his ſaid debt as to the ſaid 44 *l.* together with his damages by occaſion of the detaining that debt to be adjudged to him, *&c.* *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſes, day is therefore given to the parties aforeſaid, before our lord the king at *W.* until —— next after ——, to hear their judgment of and upon the ſaid premiſes, for that

Day to bring in the record.

Joinder in demurrer.

Continuance.

the court of our ſaid lord the preſent king here is not yet, *&c.*

Declaration in debt on a judgment. C. B.

London, to wit, *R. D.* late of *L.* carpenter, was ſummoned to anſwer *L. P.* of a plea, that he render to him 62 *l.* of lawful money of *Great Britain*, which he oweth to and unjuſtly detaineth from him, *&c.* *And whereupon* the ſaid *L.* by *J. C.* his attorney ſaith, that whereas the ſaid *L.* heretofore, that is to ſay, in *Eaſter* term in the 4th year of the reign of his preſent majeſty king *George* II. in his ſaid majeſty's court, before Sir *R. E.* Knt. and his brethren, then his majeſty's juſtices of the common bench here at *W.* in the county of *M.* by the conſideration of the ſaid court recovered againſt the ſaid *R.* 62 *l.* which were adjudged to the ſaid *L.* in the ſaid court for his damages which he had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings to the ſaid *L.* by the ſaid *R.* then lately made, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted; as by the record and proceedings thereof, now remaining in his majeſty's ſaid court here, may more fully and at large appear: *Which* ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied. *And* the ſaid *L.* hath as yet obtained no ſatisfaction of the aforeſaid judgment: *Whereby* an action hath accrued to the ſaid *L.* to demand and have of the ſaid *R.* the ſaid 62 *l.* *Yet* the ſaid *R.* (altho' often requeſted) hath not yet

rendered the ſaid 62 *l.* or any part thereof, to the ſaid *L.* but to render the ſame to him hitherto hath and ſtill doth wholly deny, to the damage of the ſaid *L.* of 20 *l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith that there is not any ſuch record of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court before Sir *R. E.* Knt. and his brethren, his majeſty's juſtices of the Common bench, as the ſaid *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.* *Pled,* Nul tiel record.

And the ſaid *L.* ſaith, that by any thing before alledged he ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of Common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record; and he prayeth that the ſaid record may be inſpected and ſeen by the juſtices here, *&c.* *Replication,* habetur talé recordum.

And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the record here on ——— : The ſame day is given to the ſaid *R.* here, *&c.* *Day given to bring in the record.*

Note; Upon bringing the record into court on the day given, the ſecondary draws up a rule of court for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of the rule that no cauſe hath been ſhewn; after which judgment may be ſigned.

Declaration in debt on a judgment in the palace-court. C.B.

Surrey, to wit, *J. M.* late, *&c.* was ſummoned to anſwer *H. G.* of a plea, that he render to him 99 *s.* and 8 *d.* which he oweth to and unjuſtly detaineth from him, *&c.* *And* thereupon the ſaid *H.* by *T. C.* his attorney ſaith, *That whereas* the ſaid *H.* (that is to ſay) at the court of the king's palace at *W.* held before the judges of the ſaid court there (to wit) at *S.* in the county of *S.* aforeſaid, within the juriſdiction of the ſaid court, on *Friday* the 23d day of *January* in the 9th year of the reign of the preſent king, by conſideration of the ſaid court recovered againſt the ſaid *J. M.* (by the name of *J. M.*) 99 *s.* and 8 *d.* which were aſſeſſed to the ſaid *H.* in the aforeſaid court of the king's palace at *W.* held before the judges of the ſaid court there, for his damages which he had ſuſtained, occaſioned by the non-performance of ſeveral promiſes and undertakings of the ſaid *J. M.* made to the ſaid *H.* by him the ſaid *J.* beſides his coſts and charges about his ſaid ſuit in that behalf expended, by the ſaid court there for increaſe adjudged, whereof the ſaid *J.* is convicted; as by the record and proceedings in the ſame court of the king's palace at *W.* held before the judges of the ſaid court there, to wit, at *S.* afore-

S. aforesaid, in the county of *S.* aforesaid, within the jurisdiction of the said court there remaining, may appear: Which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed or discharged. *And* the said *H. G.* hath not as yet sued out any execution upon that judgment: By which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 *s.* and 8 *d.* *Nevertheless*, &c.

Plea, *Nul tiel Record.*

Replication, *Habetur tale recordum.*

And hereupon the said *H.* prayeth the king's writ to be directed to the judges of the court of the king's palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, Whether there be such record of such recovery of 99 *s.* 8 *d.* against the said *J.* by the said *H. G.* or not. And it is granted to him returnable here. —— *At* which day here come as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the said court, namely, *William* duke of *Devonshire*, steward of the king's household, Sir *P. M.* Knight Marshal of the said household, and Sir *T. A.* Knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made, between the parties aforesaid, and remaining before them, which said writ and record remain filed amongst the records here without day, *&c.* *Whereupon* the said *H.* prayeth judgment and his debt aforesaid, together

Certiorari *to the palace-court prayed and awarded.*

Return.

together with his damages, by reaſon of detaining of the ſaid debt to be adjudged to him, *&c.*

Declaration in debt on a judgment of Non proſ. C. B.

Middleſex, to wit, *A. B.* late, *&c.* was ſummoned to anſwer *D. E.* in a plea, that he render to him 3 *l.* 3 *s.* which he oweth to and unjuſtly detaineth from him, *&c.* *And whereupon* the ſaid *D. E.* by *W. R.* his attorney, ſaith, *That whereas* he the ſaid *D. E.* heretofore, to wit, in the term of the holy *Trinity* in the 10th and 11th years of the reign of his preſent majeſty king *George* the Second, in his ſaid majeſty's court of *Common Bench* at *Weſtminſter* before Sir *John Willes*, Knight, and his brethren, then his ſaid majeſty's juſtices of the ſaid court here, to wit, at *Weſtminſter* in the county aforeſaid, by judgment of the ſame court recovered againſt the ſaid *A. B.* 33 *l.* 4 *s.* which were adjudged to the ſaid *D. E.* in the ſame court according to the form of the ſtatute in ſuch caſe made and provided for his coſts and charges which he had ſuſtained, for that the ſaid *A. B.* did not proſecute his ſaid majeſty's writ in a certain plea of [*as the caſe is*] lately brought by the ſaid *A. B.* againſt the ſaid *D. E.* in the ſaid court, whereof the ſaid *A. B.* is convicted as by the record and proceedings thereof now remaining in his ſaid majeſty's court of *C. B.* at *Weſtminſter* aforeſaid doth plainly appear; which ſaid judgment ſtill remaineth in force and power, not reverſed, annulled or ſatisfied. And the ſaid *D. E.* hath not yet obtained execution of the ſaid judgment. *Whereby* an action hath accrued

crued to the ſaid *D. E.* to demand and have of the ſaid *A. B.* the ſaid 33 *s.* 4 *d.* parcel of the ſaid 3 *l.* 3 *s.* *And alſo whereas* the ſaid *A. B.* on the 22d day of *July* in the year of our Lord 1737. at *W.* aforeſaid, had borrowed of the ſaid *D. E.* 29 *s.* 8 *d.* remainder of the ſaid 3 *l.* 3 *s.* to be paid to the ſaid *D. E.* when he the ſaid *A. B.* ſhould be afterwards thereunto requeſted. *Yet* the ſaid *A. B.* altho' often requeſted, hath not rendered to the ſaid *D. E.* the ſaid 3 *l.* 3 *s.* or any part thereof, but hath hitherto refuſed and ſtill doth refuſe to render the ſame to the ſaid *D. E.* whereby he ſaith, that he is injured and damnified to the value of 5 *l.* And thereof bringeth ſuit, *&c.*

Debt on a mutuatus.

Middleſex, *A. B.* late of, *&c.* was ſummoned to anſwer *C. D.* executor of the teſtament and laſt will of *E. F.* deceaſed, of a plea that he render to him 100 *l.* of good and lawful money of *Great Britain*, which he unjuſtly detaineth from, *&c.* *And* thereupon the ſaid *C.* by *W. R.* his attorney ſaith, *That whereas* the ſaid *E.* in his life-time, to wit, in the term of St. *Michael* in the 6th year of the reign of the lord the now king, here at *W.* in the ſaid county, before Sir *R. E.* Knt. and his brethren, then juſtices of our ſaid lord the king of the bench, the ſaid *E.* by the judgment of the ſaid court did recover againſt the ſaid *A.* a certain debt of 97 *l.* and 60 *s.* for his damages which he ſuſtained on account of the detaining of the ſaid debt whereof he is convicted, as by the record thereof in the ſaid court now remain-

Declaration in debt by an executor, on a judgment obtained by the teſtator. C. B.

ing plainly appeareth. *And* the ſaid *C.* averreth, that the ſaid 100 *l.* hath not been paid to the ſaid *E.* in his life-time, or to the ſaid *C.* ſince his death, or to either of them; and that no execution of the debt and damages aforeſaid, or any part thereof, hath yet been had or obtained: *By* reaſon whereof an action accrued to the ſaid *E.* in his life-time, and to the ſaid *C.* ſince his death, to demand and have of the ſaid *A.* the ſaid 100 *l.* *Yet* the ſaid *A.* altho' often requeſted, hath not paid the ſaid 100 *l.* to the ſaid *E.* in his life-time, or to the ſaid *C.* ſince the death of the ſaid *E.* or to either of them; but to pay the ſame to them hath hitherto refuſed, and to pay the ſame to the ſaid *C.* ſtill doth refuſe: Whereupon he is prejudiced, and hath damage to the value of 20 *l.* And thereof he bringeth ſuit, *&c.* *With this*, that the ſaid *C.* will verify that the judgment aforeſaid, which ſtill remaineth in its full ſtrength and power, in no ways reverſed, annulled or ſatisfied. *And* the ſaid *C.* bringeth here into court the letters teſtamentary of the ſaid *E.* whereby it plainly appeareth to the court here, that the ſaid *C.* is executor of that teſtament, and hath the adminiſtration thereof granted to him, *&c.*

Profert *of the letters teſtamentary.*

Declaration in debt on a judgment obtained in the King's Bench. C. B.

Middleſex, to wit, *R. M.* late of *B.* in the county of *Bucks*, Eſq; was ſummoned to anſwer *J. F.* clerk, in a plea, that he render to him 302 *l.* 13 *s.* which he oweth to him and unjuſtly detaineth, *&c.* *And* whereupon the ſaid *J.* by *R. H.* his attorney ſaith, that whereas the ſaid *J.* heretofore, that is to

to ſay, in the term of *Eaſter* in the 11th year of the reign of the lady *Anne* late queen of *Great Britain*, &c. in the court of the ſaid lady the late queen, before the queen herſelf at *W.* by bill without the writ of the ſaid late queen, and by the judgment of the ſame court, recovered againſt the ſaid *R. M.* by the name of, *&c.* 300*l.* of debt, and alſo 35*s.* for his damages which he ſuſtained, as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted; as by the record and proceſs thereupon, remaining in the court of our lord the preſent king, before the king himſelf at *W.* more fully appeareth: Which ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed, annulled, or in any manner ſatisfied; and the ſaid *J.* hath not yet ſued out execution of the ſaid judgment againſt the ſaid *R.* Whereby an action hath accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid 302*l.* 13*s.* *Neverthelеſs* the ſaid *R.* altho' often requeſted, *&c.* hath not yet rendered the ſaid 302*l.* 13*s.* to the ſaid *J.* but to render the ſame to him hath hitherto wholly refuſed, and ſtill doth refuſe: Whereupon the ſaid *J.* ſaith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Cambridge, to wit, *T. A.* late of *H.* in the county aforeſaid the younger, gent. was ſummoned to anſwer *T. A.* the elder, eſq; in a plea, that he render to him 2000*l.* which

Declaration in debt on a mutuatus. C. B. Mich. 10 W. 3. Roll. 734.

which he oweth him and unjuſtly detaineth, *&c.* And whereupon the ſaid *T. A.* the elder, by *R. D.* his attorney ſaith, *That whereas* the ſaid *T. A.* the younger, on the 10th day of *June* in the 10th year of the reign of our lord the preſent king, at the town of *C.* in the county of *C.* borrowed of the ſaid *T. A.* the elder the ſaid 2000*l.* to be paid to the ſaid *T. A.* the elder when he ſhould be thereunto requeſted: *Neverthelefs* the ſaid *T. A.* the younger, altho' often requeſted, hath not yet rendered the ſaid 2000*l.* to the ſaid *T. A.* the elder, but the ſame hitherto to render to him hath refuſed, and ſtill doth refuſe: Whereupon he ſaith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Judgment by Non ſum informatus.

And the ſaid *T. A.* the younger, by *J. R.* his attorney cometh and defendeth the force and injury when, *&c.* And the ſame attorney ſaith, that he is not informed by the ſaid *T. A.* the younger of any anſwer to be given for the ſaid *T. A.* the younger to the ſaid *T. A.* the elder in the ſaid plaint; and he ſaith nothing elſe thereupon: Whereby the ſaid *T. A.* the elder remaineth againſt the ſaid *T. A.* the younger thereupon undefended: *Therefore* it is conſidered that the ſaid *T. A.* the elder recover againſt the ſaid *T. A.* the younger his ſaid debt, and his damages by occaſion of the detaining of that debt to 40*s.* to the ſaid *T. A.* the elder, by his aſſent by the court here adjudged. *And* the ſaid *T. A.* the younger in mercy, *&c.* *Afterwards*, that is to ſay, on the 30th day of *May* in the

Signed 23 Dec. anno reg. W. 3. decimo.

Mercy.

Satisfaction acknowledged

the 1ſt year of the reign of our ſovereign lord *George* now king of *Great Britain*, *&c.* came here into court *N. W.* and *M.* his wife, executrix of the teſtament of the ſaid *T. A.* the the elder, eſq; by *B. B.* their attorney, and bring here into court the letters teſtamentary of the ſaid *T.* by which it ſufficiently appeareth to the court here, that the ſaid *M.* is the executrix of the ſaid teſtament, and hath the adminiſtration thereof, *&c.* And the ſaid *N.* and *M.* by their ſaid attorney, by ſpecial warrant to him in this behalf made, acknowledged, that they are ſatisfied for the ſaid debt and damages; *Therefore* he the ſaid *T. A.* the younger quit of the ſaid debt and damages, *&c.*

by baron and feme, executrix of the plaintiff.

——, to wit, *A. B.* late of, *&c.* Eſq; and *E.* his wife, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *B. C.* at the time of his death, *who died inteſtate* lately called, *&c.* were ſummoned to anſwer *P. B.* of a plea, that they render to him 223 *l.* which they owe him and unjuſtly detain, *&c.* And whereupon the ſaid *P.* by *L. R.* his attorney ſaith, that *whereas* the ſaid *P.* lately in the court of our lord the king now here, to wit, in the term of St. *Michael* in the 20th year of the reign of, *&c.* at *W.* in the county of *M.* by the conſideration of the ſame court recovered againſt the ſaid *B. C.* in his life-time, as well a certain debt of 220 *l.* as 60 *s.* which in the ſame court were adjudged to the ſaid *P.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid

Declaration in debt againſt baron and feme, adminiſtratrix on a judgment againſt the inteſtate, ſuggeſting a devaſtavit. C. B. Vide 2 R. Raym. 1510. 3 D. A. 381. p. 6. 2 Vent. 84. 1 Sid. 228.

ſaid *B. C.* was convicted, as by the record and proceſs thereupon remaining in the ſame court here more fully appeareth; which ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed or annulled; and the ſaid *P.* hath not as yet ſued out execution againſt the ſaid *B. C.* upon the ſaid judgment recovered in form aforeſaid. *And* the ſaid *P.* further ſaith, that divers goods and chattels which were of the ſaid *B. C.* at the time of his death, to the value of the debt and damages aforeſaid, at *W.* aforeſaid, have come to the hands of the ſaid *A.* and *E.* to be adminiſtred; and that the ſaid *A.* and *E.* afterwards, to wit, on the 20th day of *April* in the 30th year of the reign of, *&c.* at *W.* waſted the ſaid goods and chattels, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A.* the ſaid *P.* being no ways ſatisfied of his debt and damages aforeſaid: *Whereby* an action accrued to the ſaid *P.* to demand and have of the ſaid *A.* and *E.* the ſaid 223 *l.* *Yet* the ſaid *A.* and *E.* altho' often requeſted, have not yet rendered, nor has either of them yet rendered the ſaid 223 *l.* to the ſaid *P.* but have hitherto refuſed, and ſtill do refuſe, to render the ſame to him: Wherefore he ſaith he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth ſuit, *&c.*

Devaſtavit *ſuggeſted.*

Actio accrevit.

And the ſaid *A.* and *E.* by *T. G.* their attorney come and defend the force and injury when, *&c.* and ſay that the ſaid *P.* ought not to have or maintain his ſaid action thereupon againſt them, becauſe they ſay that

Plea, Plene adminiſtravit.

that they the ſaid *A.* and *E.* have fully adminiſtred all the goods and chattels which were of the ſaid *B. C.* at the time of his death in their hands to be adminiſtred; and that they have not, nor on the day of ſuing out the original writ of the ſaid *P.* nor at any time afterwards, had any goods or chattels which were of the ſaid *B. C.* at the time of his death in their hands to be adminiſtred; *Without this*, that they the ſaid *A.* and *E.* have waſted thoſe goods and chattels, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A.* as the ſaid *P.* has by his ſaid declaration above ſuppoſed; and this they are ready to verify: Wherefore they pray judgment, if the ſaid *P.* ought to have and maintain his ſaid action thereupon againſt them. *Traverſe.*

And the ſaid *P.* ſaith, that he by any thing by the ſaid *A.* and *E.* in pleading above alledged ought not to be barred from having his ſaid action thereupon againſt them, becauſe he ſaith, as before, that the ſaid *A.* and *E.* have waſted the goods and chattels which were of the ſaid *B. C.* at the time of his death, to the value of the ſaid debt and damages, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A.* as the ſaid *P.* hath above declared againſt them: And this he prayeth may be inquired of by the country. *Replication.*

Hertfordſhire, to wit, *Be it remembered*, that heretofore, to wit, in the term of *Eaſter* laſt paſt, before our lord the king at *W.* came *J. P.* by *J. L.* his attorney, and brought here Memorandum *of a declaration of a precedent term.* Hil. 32 & 33 Car. 2. ro. 45.

here into the court of our ſaid lord the king then and there his certain bill againſt *R. B.* adminiſtrator of all and ſingular the goods and chattels, rights and credits, which were of *W. P.* deceaſed, otherwiſe lately called *W. P.* of *R.* in the county of *E.* yeoman, in the cuſtody of the marſhal, &c. of a plea of debt; and there are pledges for proſecuring, to wit, *J. D.* and *R. R.* Which ſaid bill followeth in theſe words, to wit, *Hertford-ſhire*, to wit, *J. P.* complaineth of *R. B.* adminiſtrator of all and ſingular the goods and chattels, rights and credits, which were of *W. P.* deceaſed, otherwiſe lately called *W. P.* of *R.* in the county of *E.* yeoman, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to him 16*l.* of lawful money of *England*, which he unjuſtly detaineth from him; *for that*, to wit, that whereas the ſaid *W.* in his life-time, to wit, on the 19th day of *May* in the 25th year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. at *H.* in the county aforeſaid, by his writing obligatory ſealed with the ſeal of the ſaid *W.* *And* to the court of our ſaid lord the king now here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *J.* in the ſaid 16*l.* to be paid to the ſaid *J.* when he ſhould be thereunto afterwards requeſted: *Yet* the ſaid *W.* in his life-time, and the ſaid *R.* after the death of the ſaid *W.* altho' often requeſted, &c. have not paid, nor hath either of

Declaration in debt on a bond againſt the adminiſtrator of the obligor.

1 Vent. 354. Vide 2 R. Raym. 1510. 3 D. A. 381. p. 6. 2 Vent. 84. 1 Sid. 228.

Profert.

of them paid the ſaid 16*l.* to the ſaid *J.* but the ſaid *W.* in his life-time, and the ſaid *R.* after the death of the ſaid *W.* intirely refuſed to pay him the ſame, and the ſaid *R.* ſtill refuſeth to pay him the ſame, and unjuſtly detaineth, to the damage of the ſaid *J.* of 10*l.* And thereof he bringeth ſuit, *&c.*

And now at this day, to wit, *Monday* next after the octave of St. *Hilary* in this ſame term, to which day the ſaid *R.* had leave to imparl to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *W.* came as well the ſaid *J.* by his ſaid attorney, as the ſaid *R. B.* by *W. B.* his attorney, and the ſaid *R.* defendeth the force and injury when, *&c.* and ſaith that the ſaid *J. P.* ought not to have or maintain his ſaid action thereupon againſt him; becauſe he ſaith, that by a certain indenture made at *H.* in the county aforeſaid, on the 12th day of *February* in the 28th year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. between the ſaid *R. B.* by the name of *R. B.* of the city of *L.* pewterer, of the one part, and the ſaid *W.* by the name of *W. P.* of *R.* in the county of *E.* yeoman, of the other part, *The* counterpart of which ſealed with the ſeal of the ſaid *W.* bearing date the ſame day and year, the ſaid *R.* bringeth here into court, it is witneſſed, that the ſaid *R.* for and in conſideration of the yearly rent and covenants in the ſame reſerved, and mentioned to be paid, done and performed, on the part and behalf of the ſaid

Imparlance.

Plea, inteſtate indebted to defendant in 110*l.* *for rent on a leaſe.*

Profert in cur'.

ſaid *P. W.* his executors, adminiſtrators and aſſigns, as in the ſame is expreſſed, and for other good conſiderations the ſaid *R. B.* thereunto moving, had demiſed, granted, and to farm let, and by the ſaid indenture did demiſe, grant, and to farm let, to the ſaid *W.* all that meſuage or farm-houſe called *Hunter's farm*, otherwiſe *Hunter's hall*, ſituate and being in the pariſh of *Epping* in the county of *Eſſex*, with all and ſingular the houſes, out-houſes, buildings, barns, ſtables, yards, orchards and gardens thereunto belonging; Except and always reſerved out of the ſaid leaſe to the ſaid *R.* his heirs and aſſigns, a room in the ſaid meſuage called the parlour, and alſo a room or chamber over the ſame, with free liberty of ingreſs, egreſs and regreſs, to and for him and them, his and their ſervants and aſſigns, into, out of and from the ſaid rooms, at his and their free-will and pleaſure, during the ſaid term; and alſo except and always reſerved to the ſaid *R.* his heirs and aſſigns, all and all manner of woods, underwoods, timber-trees, and all other trees whatſoever, and the lops, tops and ſhreddings of them and every of them, and all hedge-rows ſtanding, growing or being, or which at any time after during the ſaid term by the ſaid indenture granted ſhould ſtand, grow or be in or upon the ſaid demiſed premiſes, or any part or parcel thereof, with free liberty of ingreſs, egreſs and regreſs, to and for the ſaid *R.* his heirs and aſſigns, with ſervants, labourers, horſes, carts and carriages, at times convenient in the

the year to fell, cut down, grub up, ſquare and ſaw the ſame, at his and their free-will and pleaſure, leaving and allowing wood and timber for botes and firewood; To have and to hold the ſaid meſuage or farm, lands and premiſes, in the ſaid indenture before mentioned to be demiſed and granted, with their and every of their appurtenances, (except as before excepted) to the ſaid *W.* his executors, adminiſtrators and aſſigns, from the feaſt-day of the annunciation of the bleſſed virgin *Mary* then next enſuing the date of the ſaid indenture, unto the full end and term of ſeven years thence next enſuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year, during the ſaid term, to the ſaid *R.* his heirs or aſſigns, the yearly rent or ſum of 44 *l.* of lawful money of *England*, at the two moſt uſual feaſts or days of payment in the year, *to wit*, at the feaſt of St. *Michael* the archangel, and the annunciation of the bleſſed virgin *Mary*, by equal portions; as by the ſaid indenture, amongſt other things, more fully appeareth. By virtue of which ſaid leaſe the ſaid *W.* afterwards, to wit, on the morrow of the ſaid feaſt of the annunciation of the bleſſed virgin *Mary* next after the date of the ſaid indenture, entered into the ſaid demiſed premiſes, with the appurtenances, and was poſſeſſed thereof, and had, held, occupied and enjoyed the ſaid demiſed premiſes, from the ſaid feaſt of the annunciation of the bleſſed virgin *Mary* laſt mentioned, until and after the feaſt of St. *Mi-*

chael the archangel in the 30th year of the reign of our ſaid lord the preſent king; and afterwards, to wit, on the 23d day of *December* in the 30th year aforeſaid, being ſo poſſeſſed thereof, at *H.* aforeſaid in the county aforeſaid, died inteſtate: After whoſe death, to wit, on the laſt day of *February* in the 31ſt year of the reign of our ſaid lord the preſent king, at *H.* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *W.* was in due manner committed by *H.* by divine permiſſion biſhop of *London*, to the ſaid *R.* And the ſaid *R.* in fact ſaith, that at the ſaid feaſt of St. *Michael* laſt mentioned, 110*l.* of rent for the ſaid premiſes were due and in arrear to the ſaid *R.* and were unpaid at the time of the death of the ſaid *W.* and that he the ſaid *W.* upon the ſaid feaſt of St. *Michael*, or at any time afterwards, did not pay the ſaid 110*l.* or any part thereof, nor cauſe the ſame or any part thereof to be paid to the ſaid *R.* *And* the ſaid *R.* further ſaith, that the ſaid *W. P.* in his life-time, to wit, on the 12th day of *February* in the 28th year of the reign of our ſaid ſovereign lord *Charles* II. now king of *England*, &c. at *H.* aforeſaid in the county aforeſaid, by his writing obligatory ſealed with the ſeal of the ſaid *W.* *Which* the ſaid *R.* bringeth here into court, the date whereof is on the ſame day and year, became held and bound to the ſaid *R.* in 100*l.* of lawful money of *England*, to be paid to the ſaid *R.* when he ſhould

Inteſtate indebted to defendant on a bond in 100*l.*

Profert.

ſhould be thereunto afterwards requeſted. And the ſaid *R.* further ſaith, that as well the ſaid 110*l.* for the rent aforeſaid, as the ſaid 110*l.* mentioned in the ſaid writing obligatory, at the time of the death of the ſaid *W.* and after his death, were true and juſt debts, and truly and juſtly due to the ſaid *R.* and then and ſtill unpaid to the ſaid *R.* *And* that divers goods and chattels which were of the ſaid *W.* at the time of his death, to the value of 64*l.* 17*s.* and 6*d.* and no more, after the death of the ſaid *W.* came to the hands of the ſaid *R.* as adminiſtrator as aforeſaid: *Which* ſaid goods and chattels the ſaid *R.* retaineth in his own hands, in ſatisfaction of the ſaid debts due to the ſaid *R.* by the ſaid *W.* in his life-time, in form aforeſaid. *And* the ſaid *R.* further ſaith, that he hath fully adminiſtred all the goods and chattels which were of the ſaid *W.* at the time of his death in the hands of the ſaid *R.* to be adminiſtred; and that he hath no goods and chattels which were of the ſaid *W.* at the time of his death in his hands to be adminiſtred, nor had on the day of exhibiting the ſaid bill, nor at any time afterwards, except goods and chattels to the value aforeſaid, which are not ſufficient to ſatisfy the ſaid debts, and which are bound and charged with the payment of the ſaid ſeveral debts; and this he is ready to verify: Wherefore he prayeth judgment if the ſaid *J.* ought to have or maintain his ſaid action thereupon againſt him, *&c.* *With this*, that the ſaid *R.* will verify that the ſaid *W. P.*

Aſſets only to 64l. 17s. 6d.

Which defendant retains. Andrews 305, 328.

Plene adminiſtravit.

W. P. (*the inteſtate*) *named in the indenture and bond, and* W. P. *named in the declaration, are the ſame perſon.*

in the ſaid indenture and writing obligatory named, and the ſaid *W. P.* in the declaration of the ſaid *J.* named, are one and the ſame perſon, and not other nor different.

Replication, Oyer of the bond and condition.

And the ſaid *J.* prayeth oyer of the ſaid writing obligatory, and it is read to him; and he alſo prayeth oyer of the condition of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, The condition of this obligation is ſuch, that if the above-bounden *W. P.* his heirs, executors, adminiſtrators and aſſigns, do and ſhall from time to time, and at all times hereafter, well and truly pay, obſerve, perform, fulfil, hold and keep all and ſingular the covenants, grants, articles, proviſoes, promiſes, conditions and agreements, which in his and their parts and behalf are and ought to be paid, obſerved, performed, fulfilled, held and kept, comprized, ſpecified and declared, in and by one pair of indentures of leaſe bearing the date above written, made between the above-named *R. B.* of the one part, and the ſaid *W. P.* of the other part, and that in and by all other things, according to the tenor, effect and true meaning of the ſame indentures of leaſe; then this obligation ſhall be void, or elſe it ſhall ſtand in full force; Which being read and heard, the ſaid *J.* ſaith, that he by any thing by the ſaid *R.* above by pleading alledged, ought not to be barred from having his ſaid action thereupon againſt him; *Becauſe proteſting*, that the goods and chattels which were the goods and chattels of the ſaid *W.* at the time of his death, and came to the hands of the ſaid *R.*

Bond conditioned for performance of the covenants in the leaſe.

Proteſtando *that the aſſets are above the value of* 64l. 17s. 6d.

to

to be adminiſtred, were of greater value than the ſum of 64*l.* 17*s.* and 6*d.* *And alſo proteſting*, that he the ſaid *R.* had divers goods and chattels, which were the goods and chattels of the ſaid *W.* at the time of his death, ſufficient to ſatisfy the ſaid *J.* his ſaid debt, and alſo to ſatisfy the ſaid *R.* as much money and more as was due to the ſaid *R.* by the ſaid *W.* in his life-time: *For plea*, the ſaid *J.* ſaith, that the ſaid indenture in the ſaid plea above mentioned, is the ſame indenture which is mentioned in the condition of the ſaid writing obligatory. *And* the ſaid *J.* further ſaith, that the ſaid *W.* at the time of his death was not indebted to the ſaid *R.* for the ſaid rent in the ſaid plea of the ſaid *R.* above mentioned, above the ſum of 30*l.* and this he is ready to verify: Wherefore he prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

And that defendant hath aſſets ſufficient, &c.

Says the indenture mentioned in the plea, and in the condition of the bond, are the ſame; and that the inteſtate was not indebted to the defendant for rent in above 30 l.

And the ſaid *R.* ſaith, that the ſaid plea of the ſaid *J.* above by replying pleaded, in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to maintain the ſaid action of the ſaid *J.* againſt the ſaid *R.* To which the ſaid *R.* hath no need, neither is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore for default of a ſufficient replication in this behalf, the ſaid *R.* as before prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action thereupon againſt

Demurrer.

the ſaid *R.* &c. And for cauſe of demurrer in law upon the ſaid plea, the ſaid *R.* according to the form of the ſtatute in ſuch caſe made and provided, declareth, and to the court here ſheweth theſe cauſes following, to wit, that the ſaid plea is double and incertain, and for that the ſaid plea wanteth form, &c.

Joinder. *And* the ſaid *J.* ſaith, that the ſaid plea of the ſaid *J.* above by replying pleaded in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to maintain the ſaid action of the ſaid *J.* againſt the ſaid *R.* which ſaid plea, and the matter therein contained, the ſaid *J.* is ready to verify and prove as the court, &c. And becauſe the ſaid *R.* doth not anſwer the ſaid plea, nor hath as yet any ways denied it, the ſaid *J.* as before prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining thereof to be adjudged to him, &c. *But* be-

Continuance by Cur. adviſar. vult. cauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſes, day is thereupon given to the ſaid parties before our lord the king at *W.* until *Wedneſday* next after fifteen days of *Eaſter*, to hear their judgment of and upon the premiſes, for that the court of our ſaid lord the preſent king here is not yet, &c. At which day, before our ſaid lord the king at *W.* the ſaid parties

Continuance. came by their attornies aforeſaid. *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment

judgment of and upon the premiſes, day is therefore given to the ſaid parties before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear their judgment thereupon, for that the court of our ſaid lord the preſent king here is not yet, *&c.* At which day, before our lord the king at *W.* the ſaid parties come by their attornies aforeſaid. *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſes, day is therefore given to the ſaid parties, before our lord the king at *W.* until *Tueſday* next after three weeks of St. *Michael*, to hear their judgment thereupon, for that the court of our ſaid lord the preſent king here is not yet, *&c.* At which day, before our lord the king at *W.* the ſaid parties came by their attornies aforeſaid. *Whereupon* the court having ſeen and fully underſtood all and ſingular the premiſes, and having maturely deliberated thereupon, for that it appeareth to the court of our ſaid lord the preſent king here, that the ſaid plea of the ſaid *J.* above by replying pleaded in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law for the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *R.* It is conſidered, that the ſaid *J. P.* recover againſt the ſaid *R. B.* his ſaid debt, and alſo 6 *l.* 13 *s.* and 4 *d.* for his damages, which he hath ſuſtained as well by occaſion of detaining that debt, as for his coſts and charges by him expended about his ſuit in this behalf, adjudged to the ſaid *J.* by the court of

Continuance.

Judgment for the plaintiff.

Pro miſ. 6 *l.* 13 *s.* *and* 4 *d.* 4 Nov. 1681.

our ſaid lord the preſent king here, with his aſſent to be levied of the goods and chattels which were of the ſaid *W. P.* at the time of his death in the hands of the ſaid *R.* to be adminiſtred, if he hath ſo much in his hands; and if he hath not ſo much in his hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *R.* And the ſaid *R.* in mercy, *&c.* *Afterwards*, to wit, on *Monday* next after fifteen days of St. *Martin* in this ſame term, before our lord the king at *W.* the ſaid *J. P.* came by *J. L.* his attorney and acknowledged himſelf to be ſatisfied of the ſaid debt and damages: Therefore the ſaid *R.* is quit of the ſaid debt and damages, *&c.*

Satisfaction acknowledged.

Declaration in debt by baron and feme againſt baron and feme, executrix, on a bill made by the teſtator to the feme while ſole, for the payment of 20*l.* per annum. 2 Salk. 749.

London, to wit, *H. P.* clerk, and *M.* his wife, lately called *M. B.* complain of *P. L.* eſq; and *E.* his wife, executrix of the teſtament and laſt will of *A. C.* late father of the ſaid *E.* deceaſed, otherwiſe called, *&c.* in the cuſtody of the marſhal, *&c.* of a plea, that they render to them 200 *l.* which they unjuſtly detain from them; *For that*, to wit, that *whereas* the ſaid *A.* in his life-time, to wit, on the 1ſt day of *December* in the year of our Lord 1674. at *L.* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory ſealed with the ſeal of the ſaid *A.* in his life-time, *And* to the court of our ſaid lady the queen now here ſhewn, the date whereof is on the ſame day and year, bound himſelf, his heirs, executors and adminiſtrators, in the penal ſum of 200 *l.* of lawful money of *England*,

Profert.

England, to pay to the ſaid *M.* (by the name of Mrs. *M. B.* daughter of *F. B.* of *L.* aforeſaid, and of *M.* his wife) the ſum of 20 *l.* a year, by equal portions, at or upon the four moſt uſual feaſt-days in the year, to wit, on the nativity of our Saviour, the annunciation of the virgin *Mary*, the feaſt-day of St. *John* the baptiſt, and the feaſt of St. *Michael* the archangel, by 5 *l.* for every quarter of a year; the firſt payment to begin upon the feaſt of St. *John* the baptiſt next enſuing the date of the ſaid writing; which ſaid ſum of 20 *l.* ſhould be paid at the then dwelling-houſe of the ſaid *F. B.* father of the ſaid *M.* for the term of ſix years next enſuing the firſt payment, if the ſaid *M.* the now plaintiff ſhould live ſo long. *And* the ſaid *H.* and *M.* in fact ſay, that 5 *l.* for one quarter of one year ended at the feaſt of St. *Michael* the archangel in the year of our Lord 1679. were due, in arrear and unpaid by the ſaid *A.* in his life-time to the ſaid *M.* the now plaintiff while ſhe was ſole, and ſtill are due, in arrear and unpaid: *Whereby* an action accrued to the ſaid *M.* whilſt ſhe was ſole, to demand and have of the ſaid *A. C.* in his life-time, and alſo to the ſaid *H.* and *M.* after the marriage between them celebrated, to demand and have of the ſaid *P.* and *E.* after the death of the ſaid *A.* the ſaid 200 *l.* yet the ſaid *A.* in his life-time, and whilſt the ſaid *M.* was ſole, altho' often requeſted, &c. thereunto by the ſaid *M.* and the ſaid *P.* and *E.* after the death of the ſaid *A.* altho' often requeſted, &c. thereunto by the ſaid

One quarter due.

Actio accrevit.

ſaid *M.* whilſt ſhe was ſole, and by the ſaid *H.* and *M.* after the marriage between them celebrated, have not paid, nor hath either of them paid the ſaid 200 *l.* to the ſaid *M.* whilſt ſhe was ſole, or to the ſaid *H.* and *M.* or to either of them, after the marriage between them celebrated, but they intirely refuſed, and the ſaid *P.* and *E.* ſtill intirely refuſe to pay them the ſame, to the damage of the ſaid *H.* and *M.* of 40 *l.* And thereof they bring ſuit, *&c.*

Declaration in debt on a bond, againſt the heir and deviſee of the obligor. C. B.

Cumberland, to wit, *R. W.* late of, *&c.* ſon and heir of *W. W.* deceaſed, otherwiſe called, *&c.* and *B. W.* late of the ſame, widow, deviſee of the ſaid *W.* of divers of his lands and tenements, were ſummoned to anſwer to *E. S.* eſq; in a plea, that they render to the ſaid *E.* 100 *l.* which they owe to and unjuſtly detain from him, *&c.* *And* whereupon the ſaid *E.* by *T. B.* his attorney ſaith, that *whereas* the ſaid *W.* the father of the ſaid *R.* (of whom the ſaid *R.* is ſon and heir, and the ſaid *B.* is deviſee as aforeſaid) in his life-time, to wit, the 2d day of *September* in the 6th year of the reign of his preſent majeſty, at *W.* aforeſaid, by a certain writing obligatory acknowledged himſelf to be bound to the ſaid *E.* in 100 *l.* to be paid to the ſaid *E.* when he the ſaid *W.* ſhould be thereunto required; and the ſaid *W.* did by the ſaid writing obligatory bind himſelf and his heirs well and faithfully to make the ſaid payment: *Nevertheleſs* the ſaid *W.* in his life-time, or the ſaid *R.* and *B.* (which ſaid *R.* is ſon and heir of the ſaid *W.* and which ſaid

ſaid *B.* is deviſee of the ſaid *W.* of divers of his lands and tenements as aforeſaid, by his laſt will made at *W.* aforeſaid, after the 25th day of *March* in the year of our Lord 1692. whereof the ſaid *W.* at the time of his deceaſe had a power of diſpoſing by his ſaid laſt will) after the death of the ſaid *W.* (altho' often requeſted) have not, nor hath any of them rendered to the ſaid *E.* the ſaid 100*l.* or any part thereof; but they have wholly denied, and the ſaid *R.* and *B.* ſtill do deny to render the ſame to the ſaid *E.* Whereby the ſaid *E.* ſaith that he is prejudiced and damnified to the value of 10*l.* And thereof he bringeth ſuit, *&c.* *And* he bringeth here into court the ſaid writing obligatory, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is the day and year in that reſpect above-mentioned, *&c.* *Profert.*

And the aforeſaid *R.* in his own proper perſon cometh and defendeth the force and injury when, *&c.* and ſaith nothing in bar or preclusion of the aforeſaid action of the aforeſaid *E.* whereby the ſaid *E.* remaineth againſt the ſaid *R.* thereof undefended: Therefore it is conſidered, that the ſaid *E.* recover againſt the ſaid *R.* his debt aforeſaid, and his damages by reaſon of detaining that debt to 80*s.* by the court here adjudged to the ſaid *E.* by his aſſent, according to the form of the ſtatute in ſuch caſe made and provided. And the ſaid *R.* in mercy, *&c.* *Judgment by Nil dicit againſt the heir.*

And the ſaid *B.* by ——— her attorney cometh and defendeth the force and injury when, *Plea, not deviſed.*

when, &c. and ſaith that ſhe ought not to be charged with the ſaid debt by virtue of the ſaid writing obligatory, becauſe ſhe ſaith that ſhe is not deviſee of the ſaid *W.* of any of his lands and tenements, as by the ſaid declaration is above ſuppoſed: And of this ſhe putteth herſelf upon the country, &c.

Of Eaſter *Term in the ſixteenth Year of the Reign of King* George *the Second.*

To the Juſtices of our Lord the King of the Bench.

Bill in debt on a bond againſt a member of parliament. C. B. Lil. Ent. 501. 2 Ld. Raym. 1442. 2 Strange 734. *Proceſs prayed.* *Stat.* 8 & 9. W. 3. *Stat.* 12 & 13 W. 3. c. 3. Profert *of the bond.*

Middleſex, to wit, *H. B.* ſpinſter, by *J. S.* her attorney complaineth of *H. W.* eſq; otherwiſe called, &c. (he having privilege of parliament) of a plea that he render to her [*as in a bill againſt an attorney in debt on a bond to*] bringeth ſuit, &c. *And* hereupon the ſaid *H.* prayeth proceſs of the lord the king, according to the form of the ſtatute in ſuch caſe made and provided, to be made to her thereupon: And it is thereupon granted to her, &c. *And* ſhe bringeth here into court the writing obligatory aforeſaid, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is the day and year aforeſaid, &c.

Pledges of proſecuting { J. D. and R. R.

GEORGE

GEORGE the Second, *&c.* To the Sheriff of *M.* greeting. We command you, that you ſummons *H. V.* eſq; otherwiſe called, *&c.* (the ſaid *H. V.* having privilege of parliament) that he be before our juſtices at *W.* on *Monday* next after the morrow of the aſcenſion of our Lord, to anſwer to *H. B.* ſpinſter, of a plea that he render to her 40 *l.* which he oweth to her and unjuſtly detaineth, *&c.* for that whereas [*Verbatim as in the bill to*] the damage of the ſaid *H.* of 20 *l.* as it is ſaid: And have you there this writ. Witneſs, *&c.* *Writ of ſummons thereon.* Lil. Ent. 501, 670.

GEORGE the Second, *&c.* To the Sheriff of *M.* greeting. We command you, that you diſtrain and attach *H. V.* eſq; otherwiſe called, *&c.* (the ſaid *H. V.* having privilege of parliament) by all his lands and chattels in your bailiwic, ſo that neither he nor any one through him put his hands therein until you ſhall have other command from us; and that of the iſſues thereof you anſwer to us, ſo that he be before our juſtices at *W.* on *Friday* next after the morrow of the *Holy Trinity*, to anſwer to *H. B.* ſpinſter, of a plea that he render to her 840 *l.* which he oweth to her, and unjuſtly detaineth from her, *&c.* For that whereas [*Verbatim as in the bill to*] damage of the ſaid *H.* of 20 *l.* as is ſaid, and to hear his judgment for many defaults: And have you there this writ. Witneſs, *&c.* Diſtringas *thereon.* Lil. Ent. 569.

Cheſhire, to wit: *Be it remembered*, that heretofore, that is to ſay, in the term of *Eaſter* laſt paſt, before our lord the king at *W.* Memorandum *of a bill of a precedent term.*

Trin. 2 Jac. 2. Ro. 121.

W. came *J. G.* by *J. L.* his attorney and brought here in the court of our ſaid lord the king then there his certain bill againſt *T. H.* and *T. H.* executors of the teſtament and laſt will of *E. H.* deceaſed, lately called *E. H.* of the town of *M.* in the county of *C.* tanner, in the cuſtody of the marſhal, &c. of a plea of debt; and there are pledges for proſecuting, namely, *J. D.* and *R. R.* Which ſaid bill followeth in theſe words, to wit,

Declaration in debt on a bond againſt the executors of the obligor. B. R. Carth. 11. 3 Mod. 114.

Cheſhire, to wit, *G. J.* complaineth of *T. H.* and *T. H.* executors of the teſtament and laſt will of *E. H.* deceaſed, lately called *E. H.* of the town of *M.* in the county of *C.* tanner, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea that they render to him 40 *l.* of lawful money of *England*, which they owe him and unjuſtly detain; *For that*, that is to ſay, that whereas the ſaid *E.* in his life-time, that is to ſay, on the 11th day of *December* in the 34th year of the reign of the lord *Charles* II. late king of *England*, &c. at *T.* in the county aforeſaid, by his certain writing obligatory ſealed with the ſeal of the ſaid *E.* in his life-time, and to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged him to be held and firmly bound to the ſaid *G.* in the ſaid 40 l. to be paid to the ſaid *G.* when he ſhould be thereunto requeſted: *Nevertheleſs* the ſaid *E.* in his life-time, and the ſaid *T.* and *T.* after the death of the ſaid *E.* altho' often requeſted, &c. have not paid the ſaid 40 *l.* to the ſaid *G.* but hitherto

Profert.

hitherto to pay him the ſame have intirely efuſed, and the ſaid *T.* and *T.* ſtill wholly efuſe to pay him the ſame, and unjuſtly de-ain, to the damage of the ſaid *G.* of 100*s.* And thereof he bringeth ſuit, *&c.*

And now at this day, that is to ſay, on *Friday* next after the morrow of the *Holy Trinity* in this ſame term, to which day the aid *T.* and *T.* had leave to imparl to the ill aforeſaid, and then to anſwer thereunto efore our lord the king at *W.* come as well he ſaid *G.* by his attorney aforeſaid, as the id *T.* and *T.* by *M. J.* their attorney; *And* he ſaid *T.* and *T.* defend the wrong and in-ry when, *&c.* and ſay, that the ſaid *G.* ught not to have or maintain his ſaid action hereof againſt them; becauſe they ſay, that ey the ſaid *T.* and *T.* before the day of hibiting of the ſaid bill, had fully admi-ſtred all the goods and chattels which were the ſaid *E. H.* at the time of his death; nd that they have no goods and chattels hich were of the ſaid *E. H.* at the time of s death in their hands to be adminiſtred, nor ad they on the day of exhibiting of the ſaid ll, nor at any time afterwards; and this ey are ready to verify: Wherefore they ray judgment, if the ſaid *G.* ought to have maintain his ſaid action thereof againſt em, *&c.*

Imparlance.

Plea, Plene adminiſtravit.

And the ſaid *G.* ſaith, that he by any ing by the ſaid *T.* and *T.* above in plead-g alledged, ought not to be precluded from s ſaid action thereof againſt the ſaid *T.* and becauſe he ſaith that the ſaid *T.* and *T.*

Replication.

have, and on the day of exhibiting of the ſaid bill, that is to ſay, on the 21ſt day of *April* in the 2d year of the reign of our lord *James* II. now king of *England*, &c. had divers goods and chattels which were of the ſaid *E. H.* at the time of his death in their hands to be adminiſtred, to the value of the debt aforeſaid, whereof they could have ſatisfied the ſaid *G.* for his debt aforeſaid, to wit, at *T.* in the county aforeſaid; and he prayeth that this may be inquired of by the country: *And* the ſaid *T.* and *T.* do the like, *&c.* *And* becauſe the ſaid iſſue above joined between the ſaid parties ought to be tried by men of the county palatine of *C.* that is to ſay, by men of the neighbourhood of *T.* aforeſaid in the ſaid county of *C.* where the writ of our lord the king runneth not, and not elſewhere; therefore the record of the ſaid plaint is ſent to the juſtices of the ſaid lord the king of the ſaid county of *C.* ſo that the ſaid juſtices, by writ of our ſaid lord the king of that county to be duly made, cauſe it to be commanded to the ſheriff of the ſame county, that he cauſe to come before the ſaid juſtices of our ſaid lord the king of the ſaid county of *C.* at the next ſeſſions for the ſaid county after the ſaid record ſhall be delivered to them, twelve free and lawful men of the neighbourhood of *T.* aforeſaid in the ſaid county of *C.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* when the verification and iſſue aforeſaid ſhall be made and tried, that then the ſaid juſtices ſend to our lord the king

Iſſue.

Mittimus *to the county palatine.*

king at *W.* the record of the ſaid plaint, with the whole thereof which ſhall be done thereupon in the court of our ſaid lord the king there before them, at a certain day which the ſaid juſtices of the county palatine aforeſaid in the ſame court there ſhall prefix to the ſaid parties to hear judgment thereupon, *&c.* And it is told to the ſaid *G.* that he ſue with effect at his peril, *&c.*

Declaration in debt on a bond contained in a deed for performance of an agreement in that deed. B.R.

London, to wit, *I. F. N.* and *J. F. N.* complain of *G. D.* eſq; otherwiſe the right honourable *G.* marquis *D.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea that he render to them 17,100 *l.* of lawful money of *G. B.* which he oweth them and unjuſtly detaineth; *For that*, to wit, *that whereas* by a certain writing or agreement made at *L.* aforeſaid, to wit, in the pariſh of, *&c.* on the 29th day of *Auguſt* in the year of our Lord 1720. reciting, that whereas the ſaid *I.* and *J.* for the conſideration in the ſaid writing mentioned, had bargained and ſold to the ſaid *G.* 900 *l.* intereſt or credit in the principal capital ſtock and fund of the governor and company of merchants of *Great Britain*, trading to the *South Seas* and other parts of *America*, and for encouraging the fiſhery, *&c.* Which ſaid 900 *l.* ſtock they the ſaid *I.* and *J.* for themſelves, their executors, adminiſtrators and aſſigns, covenanted, promiſed and agreed to transfer, or cauſe to be transferred, to the ſaid *G.* his executors, adminiſtrators or aſſigns, within fourteen days next after the

opening of the transfer-books after the *Chriſtmas* dividend next enſuing the date thereof; and the ſaid *G.* by the ſaid writing covenanted, promiſed and agreed for himſelf, his executors and adminiſtrators, on the transferring the ſaid 900*l.* ſtock, to pay, or cauſe to be paid, to the ſaid *I.* and *J.* their executors, adminiſtrators or aſſigns, for the ſaid ſtock, the ſum of 8550*l.* of lawful money of *G. B.* and by the ſaid writing it is mentioned that it was mutually agreed by and between the ſaid parties, that the laſt *Midſummer* dividend, and all other dividends, profits and commodities whatſoever, which ſhould ariſe or become due upon account of the ſaid 900*l.* ſtock, ſhould be and remain to and for the proper uſe, benefit and advantage of the ſaid *G.* his executors, adminiſtrators and aſſigns. *And* for the true obſervance and performance of the ſaid agreement on the part of the ſaid *G.* to be performed, the ſaid *G.* by the ſaid writing bound himſelf, his heirs, executors and adminiſtrators, to the ſaid *I.* and *J.* their heirs, executors and adminiſtrators, in the penal ſum of 17,100*l.* as by the ſaid writing, *which* the ſaid *I.* and *J.* under the ſeal of the ſaid *G.* bearing date the ſame 29th day of *Auguſt* in the year aforeſaid, bring here into court, more fully appeareth. *And* the ſaid *I.* and *J.* in fact ſay, that the ſaid transfer-books, after the *Chriſtmas* dividend made by the company next after the date of the ſaid writing, were opened upon the 1ſt day of *May* in the year of our Lord 1721. at *L.* aforeſaid; *and* that the

Profert.

Averment.

he ſaid *I.* and *J.* within 14 days next after he opening the ſaid books, that is to ſay, n the 12th day of *May* in the year of our Lord 1721. the ſaid 12th day being a trans-er-day from eleven of the clock in the fore-oon until one of the clock in the afternoon f the ſame day, at the office of the ſaid ompany, in a certain room called the trans-r-room, at *L.* aforeſaid, were ready to tranſ-r to the ſaid *G.* the ſaid 900*l.* ſtock in the ransfer-books of the ſaid company, and en and there offered to transfer the ſaid oo*l.* to the ſaid *G.* in the ſaid books, but ither the ſaid *G.* nor any one on his behalf en came or was preſent to accept the ſaid ock; nor did the ſaid *G.* then or at any ther time pay to the ſaid *I.* and *J.* or to ther of them, the ſaid 8550*l.* for the ſaid ock, according to the ſaid agreement. *And* e ſaid *I.* and *J.* ſay, that the uſual man-r of transferring ſtock in the capital ſtock fund of the governor and company afore-id, was on the ſame 12th day of *May*, and ng before had been, by transferring ſuch ock in the ſaid books at the ſaid office, in e room aforeſaid, on transfer-days, at any me between nine of the clock in the fore-oon and one of the clock in the afternoon; *hereby* an action accrued to the ſaid *I.* and to demand and have of the ſaid *G.* the id 17,100*l.* *Neverthelеſs* the ſaid *G.* altho' ten requeſted, hath not paid the ſaid ,100*l.* or any part thereof, to the ſaid *I.* d *J.* or either of them, but hath intirely fuſed, and doth ſtill refuſe to pay the ſame

to them, to the damage of the ſaid *I.* and *J.* of 100*l.* And thereof they bring ſuit, *&c.*

Plea, Non debet. *And* the ſaid *G.* by *J. H.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith that he doth not owe to the ſaid *I.* and *J.* the ſaid 17,100*l.* or any part thereof, in manner and form as the ſaid *I.* and *J.* above complain againſt him and of this he putteth himſelf upon the

Iſſue. country: *And* the ſaid *I.* and *J.* do the like. *Therefore*, &c.

Declaration in debt on a bail-bond. C. B. 1 Attorney's Prac. C. B. *Middleſex*, to wit, *C. B.* late of the *Inner Temple*, *London*, gent. otherwiſe called *C. B.* of the *Inner Temple*, *London*, gent. was ſummoned to anſwer *A. C.* aſſignee of Sir *R. H.* knt. and *E. B.* eſq; late ſheriff of the ſaid county of *M.* according to the form of the ſtatute in ſuch caſe lately made and provided, of a plea, that he render to her 20*l.* which he oweth her, and unjuſtly detaineth, *&c.* whereupon the ſaid *A. C.* by *J. B.* her attorney ſaith, that *whereas* one *W. L.* after the 1ſt day of the term of the *Holy Trinity* in the year of our Lord 1706. to wit, the 4th day of *April* in the 10th year of the reign of our lord the preſent king, at *W.* in the ſaid county of *M.* was in due manner arreſted by the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the ſaid county of *M.*) by virtue of a certain writ of our lord the preſent king of *Capias ad reſpondendum*, directed to the ſheriff of the county of *M.* and out of the court of our ſaid lord the preſent king (the ſame being then here, to wit, at *W.* in the county of *M.*) before that time in due

1 Strange 60, 727, 444, 643, 893.

ner iſſued and returnable here from the day of *Eaſter* in fifteen days then next enſuing, at the ſuit of the ſaid *A. C.* of a plea of treſpaſs, and alſo in a certain plea of debt, upon demand 10*l.* *And whereas* the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the county of *M.* aforeſaid) took bail from the ſaid *W. L.* of and upon the ſaid arreſt for his appearance, according to the tenor of the ſaid writ; *to wit*, the ſaid *W. L.* one *W. B.* and the ſaid *C. B.* (as bail for the ſaid *W. L.*) on the ſaid th day of *April* in the ſaid 10th year of the eign of our ſaid lord the preſent king, at *W.* foreſaid, by their certain writing obligatory *jointly and ſeverally* allowed themſelves to be eld and firmly bound to the ſaid Sir *R. H.* nd *E. B.* (being ſheriff of the ſaid county f *M.*) by the name of Sir *R. H.* and *E. B.* heriff of the ſaid county of *M.* in the ſaid o*l.* to be paid to the ſaid ſheriff or his aſgns, when they the ſaid *W. L. W. B.* and nd *C. B.* or either of them, ſhould be thereunto requeſted, with a condition to the ſaid riting obligatory underwritten, that if he e ſaid *W. L.* ſhould appear before the juices of our ſaid lord the king at *W.* from e day of *Eaſter* in fifteen days, to anſwer the ſaid *A. C.* of a plea of treſpaſs, and ſo in a certain plea of debt upon demand o*l.* that then the ſaid obligation ſhould be oid and of no force, otherwiſe it ſhould and and remain in its full ſtrength, force d effect, as by the ſaid writing obligatory, d the condition thereof (relation being ereunto had) may more fully appear. *And*

the ſaid *A. C.* in fact ſaith, that the ſaid *W. L.* did not appear before the juſtices of our ſaid lord the preſent king here, to wit, at *W.* aforeſaid, from the day of *Eaſter* in fifteen days, in the ſaid condition mentioned, according to the form and effect of that condition, by reaſon whereof the ſaid writing obligatory became forfeited. *And* the ſaid *A. C.* in fact ſaith, that afterwards, to wit, on the 19th day of *May* in the year of our Lord 1724. at *W.* aforeſaid, the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the ſaid county of *M.*) by the name of Sir *R. H.* knt. and *E. B.* eſq; ſheriff of the county of *M.* within named, at the requeſt of the ſaid *A. C.* the plaintiff in that ſuit, by his indorſement in due manner aſſigned the ſaid writing obligatory to the ſaid *A. C.* according to the form of the ſtatute in ſuch caſe made and provided, by then and there indorſing the ſaid writing obligatory, and atteſting the ſame under his hand and the ſeal of his office of ſheriff of the county of *M.* aforeſaid, in the preſence of two credible witneſſes, to wit, of *C. T.* and *J. C.* according to the form of the ſaid ſtatute, the ſaid 20 *l.* in the ſaid writing obligatory contained then and there being unpaid, whereof the ſaid *C. B.* then and there had notice; whereby and by force of the premiſes, and alſo by force of the ſaid ſtatute, an action accrued to the ſaid *A. C.* as aſſignee of the ſaid Sir *R. H.* and *E. B.* ſheriff of the ſaid county of *M.* to demand and have of the ſaid *C. B.* the ſaid 20 *l.* Yet the ſaid *C. B.* altho' often required, hath not yet rendered

rendered the ſaid 20*l.* to the ſaid Sir *R. H.* and *E. B.* or to the ſaid *A. C.* or either of them, but hath hitherto altogether refuſed to render the ſame to them or to either, and yet doth refuſe to render the ſame to the ſaid *A. C.* and the ſaid 20*l.* ſtill remain unpaid: Wherefore ſhe ſaith ſhe is the worſe, and hath damage to the value of 10*l.* And thereof ſhe bringeth ſuit, *&c. And* ſhe bringeth here into court as well the ſaid writing obligatory which teſtifieth the ſaid debt in form aforeſaid, the date whereof is the 4th day of *April* in the ſaid 10th year of the reign of our ſaid lord the preſent king, as the ſaid indorſed writing thereupon, the date whereof is the ſaid 19th day of *May* in the year of our Lord 1724. aforeſaid, whereby the ſaid *A. C.* ſufficiently appeareth to the court here to be aſſignee of the ſaid ſheriff of the debt and writing obligatory aforeſaid, and thereof to have her ſaid action, *&c.* Profert.

Suſſex, to wit, *Be it remembered*, that heretofore, to wit, in the term of the *Holy Trinity* laſt paſt, before our lord the king at *W.* came *H. G.* eſq; by *N. T.* his attorney, and brought here into the court of our ſaid lord the king then there his certain bill againſt *E. A.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *J. A.* gent. deceaſed, who died inteſtate, lately called *J. A.* of *R.* otherwiſe *E.* in the county aforeſaid, gent. in the cuſtody of the marſhal, *&c.* of a plea of debt; and there are pledges for proſecuting, to wit, *J. D.* and *R. R.* Which Memorandum *of a declaration of a precedent term.*

Declaration in debt for rent, upon articles againſt an adminiſtratrix.
Salk. 325.
Carth. 511.
Ca. B. R. 288.
Vide 2 R. Raym. 1510.
3 D. A. 381. p. 6.
2 Vent. 84.
1 Sid. 228.

ſaid bill followeth in theſe words, to wit, *Suſſex*, to wit, *H. G.* eſq; complaineth of *E. A.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *J. A.* gent. deceaſed, who died inteſtate, lately called *J. A.* of *R.* otherwiſe *E.* in the county aforeſaid, Gent. in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that ſhe render to him 60 *l.* of lawful money of *England*, which ſhe unjuſtly detaineth from him; *For that*, to wit, that *whereas* by a certain writing of articles made at *H.* in the county aforeſaid, on the 11th day of *January* in the year of our Lord 1689. between the ſaid *H.* by the name of *H. G.* of *B.* within the pariſh of *E. G.* in the county of *S.* eſq; of the one part, and the ſaid *J.* by the name of *J. A.* of *R.* otherwiſe *E.* in the county aforeſaid,

Profert.

gent. of the other part; *The* counterpart whereof, ſealed with the ſeal of the ſaid *J.* the ſaid *H.* bringeth here into court, bearing date the ſame day and year the ſaid *H.* demiſed to the ſaid *J. A.* all thoſe two ſeveral pieces or parcels of land called the *Deane*, containing by eſtimation 22 acres, with the appurtenances, in *H.* aforeſaid in the county aforeſaid; and alſo all thoſe four pieces of marſh-land called *H. marſh*, containing by eſtimation 32 acres, with the appurtenances,

Habendum.

in *H.* aforeſaid: *To hold* to the ſaid *J. A.* his executors and adminiſtrators, from the feaſt of the birth of our Lord then laſt paſt for eleven years, *At* and under the yearly rent

of 30*l.* to be paid half-yearly during the ſaid term, *to wit*, at the feaſts of St. *John* the baptiſt, and the birth of our Lord, by equal portions, or within one and twenty days after the ſaid feaſts, as by the ſaid writing more fully appeareth. *By virtue* of which ſaid demiſe the ſaid *J. A.* entred into the ſaid premiſes, with the appurtenances, and was poſſeſſed thereof until and on the feaſt of the birth of our Lord in the year of our Lord 1697. and by 21 days thence next enſuing. *And* 60*l.* of the ſaid rent for two years ended at the ſaid feaſt of the birth of our Lord in the year 1696. and by 21 days thence next enſuing, were in arrear in the life of the ſaid *J.* and are ſtill unpaid: *Whereby* an action accrued to the ſaid *H.* to demand and have of the ſaid *J.* in his life-time, and of the ſaid *E.* after the death of the ſaid *J.* (*To which* ſaid *E.* adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *J.* at the time of his death, after his death was committed at *H.* aforeſaid in the county aforeſaid) the ſaid 60*l.* *Yet* the ſaid *J.* in his life-time, and the ſaid *E.* after his death, altho' often requeſted, *&c.* have not yet paid the ſaid 60*l.* to the ſaid *H.* but they have hitherto intirely refuſed, and the ſaid *E.* ſtill refuſeth to pay him the ſame, to the damage of the ſaid *H.* of 20*l.* And thereof he bringeth ſuit, *&c.*

Reddendum.

Teſtator entered.

Rent accrued.

Actio accrevit.

Adminiſtration committed to defendant.

And now at this day, to wit, *Monday* next after the octave of St. *Hilary* in this ſame term, until which day the ſaid *E.* had licence

Imparlance.

cence to imparl to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *W.* come as well the ſaid *H. G.* by his ſaid attorney, as the ſaid *E.* by *J. L.* her attorney; *And* the ſaid *E.* defendeth the force and injury when, *&c.* *And as to* 30*l.* parcel of the ſaid 60 *l.* in the ſaid declaration mentioned to be in arrear of the ſaid rent for the firſt year of the ſaid two years, the ſaid *E.* ſaith that ſhe doth not detain from the ſaid *H.* the ſaid 30*l.* nor any parcel thereof, in manner and form as the ſaid *H.* above complaineth againſt her; and of this ſhe putteth herſelf upon the country: *And* the ſaid *H.* doth ſo likewiſe, *&c.* *And* as to the other 30*l.* reſidue of the ſaid 60*l.* the ſaid *E.* ſaith, that the ſaid *H. G.* ought not to have or maintain his ſaid action thereupon againſt her, becauſe ſhe ſaith, that in the life-time of the ſaid *J.* and whilſt ſhe the ſaid *E.* was ſole, to wit, on the 20th day of *January* in the year of our Lord 1686. at *H.* aforeſaid in the county aforeſaid, he the ſaid *J. A.* by the name of *J. A.* of *R.* in the county of *S.* gent. by his certain writing obligatory ſealed with the ſeal of the ſaid *J.* *And* to the court of our ſaid lord the king now here ſhewn, bearing date the ſaid 20th day of *January* in the year of our Lord 1686. aforeſaid, acknowledged himſelf to be held and firmly bound to the ſaid *E.* whilſt ſhe was ſole, then by the name of *E. R.* of *R.* in the county aforeſaid, ſpinſter, in 2000*l.* of lawful money of *England*, to be paid to the ſaid *E.* when he ſhould be afterwards thereunto required,

As to part, Non detinet.

Iſſue.

As to the reſidue, a bond entered into by the inteſtate to the defendant before their marriage to leave her 1000*l.* *at his death.*

Profert.

quired, with a condition to the ſaid writing obligatory underwritten, reciting, that whereas a marriage was by the bleſſing of God in a ſhort time to be ſolemnized between the ſaid *J. A.* and her the ſaid *E.* ſo that if the ſaid *E.* ſhould ſurvive the ſaid *J.* and that the ſaid *J.* ſhould die before the ſaid *E.* then if the ſaid *J. A.* ſhould leave, or if his heirs, executors or aſſigns ſhould well and truly pay, or cauſe to be paid to the ſaid *E.* her executors, adminiſtrators or aſſigns, the full and intire ſum of 1000*l.* of lawful money of *England*, within one month after the death of the ſaid *J. A.* without fraud or deceit, that then the ſaid obligation ſhould be void, otherwiſe to ſtand and remain in its full force and virtue; as by the ſaid writing obligatory, and the condition of the ſame writing obligatory brought here into court, more fully appeareth. *And* the ſaid *E.* further ſaith, that afterwards, to wit, on the 1ſt day of *March* in the ſaid year of our Lord 1686. at *H.* aforeſaid in the county aforeſaid, ſhe the ſaid *E.* married with the ſaid *J. A.* And afterwards, and before the day of exhibiting the bill of the ſaid *H.* to wit, on the 1ſt day of *March* in the year of our Lord 1696. the ſaid *J. A.* died inteſtate at *H.* aforeſaid in the county aforeſaid, and did not leave to the ſaid *E.* the ſum of 1000*l.* nor any part thereof; and that at any time after the death of the ſaid *J. A.* hitherto the ſum of 1000*l.* or any part thereof, hath not been paid by the heirs or aſſigns of the ſaid *J. A.* or any of them. *And* the ſaid *E.* further ſaith, that

Defendant and inteſtate intermarried.

He died,

and did not leave her 1000l.

Adminiſtration granted to defendant.

that after the death of the ſaid *J.* to wit, on the 13th day of *March* in the year of our Lord 1696. at *H.* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *J. A.* at the time of his death, was in due form of law committed to the ſaid *E.* by *T. B.* doctor of laws, commiſſary or principal official lawfully appointed of the reverend father in God *John* by divine permiſſion lord biſhop of *Chicheſter*, and for the whole archdeaconry of *L.* in the dioceſe of *C.* aforeſaid, to whom the committing the ſaid adminiſtration of right belonged. *After* the committing which ſaid adminiſtration, divers goods and chattels which were of the ſaid *J.* at the time of his death, to the value of 230 *l.* and not more, came to the hands of the ſaid *E.* by virtue of the ſaid adminiſtration, to wit, at *H.* aforeſaid in the county aforeſaid: *Which* ſaid goods and chattels the ſaid *E.* retaineth in her hands, in part of ſatisfaction of the ſaid writing obligatory. *And* the ſaid *E.* further ſaith, that on the day of exhibiting the ſaid bill of the ſaid *H.* or before that time, or at any time afterwards, there did not come to the hands of the ſaid *E.* any other or more goods and chattels which were of the ſaid *J.* at the time of his death, beſides the ſaid goods and chattels to the value of the ſaid 230*l.* and not more, and which are not ſufficient to ſatisfy to the ſaid *E.* the ſaid ſum of 1000*l.* mentioned in the condition of the ſaid writing obligatory; *and* this ſhe

Pract. Reg. 37, 43.

Aſſets to 230*l.*

Which ſhe retains.

No other aſſets.

Bond in force.

ſhe is ready to verify: Wherefore ſhe prayeth judgment if the ſaid *H.* ought to have or maintain his ſaid action thereupon againſt her, *&c. With this*, that the ſaid *E.* will verify that the ſaid writing obligatory ſtill remaineth in its full force and effect, no ways annihilated or ſatisfied. *And* that the ſaid *J. A.* in the ſaid writing obligatory mentioned, and *J. A.* in the ſaid declaration and plea mentioned, are one and the ſame perſon, and not other nor different.

Obligor and inteſtate the ſame perſon.

Edw. Northey.

And the ſaid *H. G.* ſaith, that he by any thing by the ſaid *E.* above in pleading alledged, ought not to be barred from having his ſaid action thereupon againſt her the ſaid *E.* becauſe he ſaith that the ſaid plea above pleaded by the ſaid *E.* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid *H.* from having his ſaid action thereupon againſt the ſaid *E.* To which ſaid plea he the ſaid *H.* hath no need, and is not bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore, for default of a ſufficient anſwer in this behalf, the ſaid *H.* prayeth judgment and his ſaid debt, together with his damages by the occaſion of detaining that debt to be adjudged to him, *&c.*

Demurrer.

And the ſaid *E.* ſaith, that the ſaid plea above pleaded by the ſaid *E.* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to bar the

Joinder.

the ſaid *H.* from having his ſaid action thereupon againſt her the ſaid *E.* which ſaid plea, and the matter therein contained, the ſaid *E.* is ready to verify and prove as the court, *&c.* And becauſe the ſaid *H.* doth not anſwer to the ſaid plea, nor has as yet in any manner denied the ſame, ſhe the ſaid *E.* as before prays, and that the ſaid *H.* may be barred from having his ſaid action thereupon againſt her, *&c.* *But* becauſe the court of our ſaid lord the king now here is not adviſed about giving judgment of and concerning the premiſes, day is therefore given to the ſaid parties to come before our lord the king at *W.* until *Wedneſday* next after fifteen days of *Eaſter*, to hear judgment of and upon the ſame premiſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof. *At which day* before our lord the king at *W.* the ſaid parties came by their attornies aforeſaid. *But* becauſe the court of our ſaid lord the king now here is not adviſed about giving judgment of and concerning the premiſes, day is therefore given to the ſaid parties to come before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear judgment of and upon the ſame premiſes, for that the court of our ſaid lord the king now here is not adviſed thereof. *At which day* before our lord the king at *W.* the ſaid parties came by their attornies aforeſaid. *But* becauſe, *&c.* [like continuances to *Michaelmas*, *Hilary*, *Eaſter*, *Trinity* and *Hilary Terms.*] *At which day* before our lord the king

Continuance.

Continuance.

Continuance.

king at *W.* the ſaid parties come by their attornies aforeſaid. *Whereupon* the court of our ſaid lord the king now here having ſeen and fully underſtood all and ſingular the premiſes, and having maturely deliberated thereupon, it appeared to the court of our ſaid lord the king now here, that the ſaid plea above pleaded by the ſaid *E.* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to bar the ſaid *H.* from having his ſaid action againſt the ſaid *E.* *Therefore it is conſidered*, that the ſaid *H. G.* take nothing by his ſaid bill, but that he be in the mercy of the court for his falſe clamours, *&c.* and that the ſaid *E.* go thereof without day, *&c.* And it is further conſidered, that the ſaid *E. A.* recover againſt the ſaid *H. G.* 14 *l.* 10 *s.* for her coſts and charges laid out by her about her defence in this behalf, adjudged to the ſaid *E.* by the court of our ſaid lord the king now here, by her aſſent, according to the form of the ſtatute in ſuch caſe made and provided; and that the ſaid *E. A.* have execution thereof, *&c.*

Judgment for the defendant.

Judgment ſigned, 21 Feb. 1699.

Adjudged in this caſe, that the debt was only ſuſpended, and not extinguiſhed.

Middleſex, to wit, *F. O.* widow, complaineth of *T. O.* eſq; and *H. H.* clerk, in the cuſtody of the marſhal, *&c.* of a plea that they render to her 84 *l.* of lawful money of *England*, which they owe her and unjuſtly detain; *for that*, to wit, that *whereas* by a certain indenture made at the pariſh of *St. Clement Danes* in the ſaid county of *M.*

Declaration in debt for rent upon a leaſe of a rectory, tithes, &c.

on

on the 26th day of *February* in the year of our Lord 1682. between the ſaid *F. O.* widow and relict of *G. O.* doctor of divinity, and late prebendary of the prebend of *L.* founded in the cathedral church of *L.* in the county of *S.* deceaſed, *M. O.* ſpinſter, daughter of the ſaid *G.* and *F. O. H. H.* of *R.* in the county of *W.* eſq; and *J. O.* of the *Middle Temple, London*, eſq; of the one part, and the ſaid *T. O.* by the name of *T. O.* of *H.* in the ſaid pariſh of *L.* eſq; and the ſaid *H. H.* by the name of *H. H.* vicar of *L.* aforeſaid, and prebendary of *L.* aforeſaid, of the other part; *one* part of which ſaid indenture, ſealed with the ſeals of the ſaid *T.* and *H.* the ſaid *F.* bringeth here into court, the date whereof is on the ſame day and year aforeſaid; the ſaid *F. M. H.* and *J.* for and in conſideration of the rents and covenants expreſſed in the ſaid indenture on the part of the ſaid *T.* and *H.* to be performed, by the ſaid indenture demiſed and to farm let to the ſaid *T. O.* and *H. H.* all that prebend, rectory or parſonage of *L.* aforeſaid, with all the tithes of corn and hay growing and renewing, or which at any time during the term by the ſaid indenture demiſed ſhould grow, ariſe and renew upon the ſame, ſituate, lying and being in the ſaid county of *S.* and the city and county of *L.* together with all rights, members, penſions, portions, profits, commodities and appurtenances, to the ſaid prebend belonging or in any manner appertaining, together with all and all manner of houſes, edifices and ſtructures, yards, gardens,

Profert.

dens, glebe lands, meadows, paſtures, commons, chief-rents, reverſions, ſervices, tithes, tithings, fruits, oblations, obventions, emoluments, and all rights, properties, advantages, and hereditaments whatſoever, to the ſaid prebend belonging or appertaining (Except the preſentation and advowſon of and to the vicarage of *L.* aforeſaid, when and as often as the ſame ſhould become vacant during the term in the ſaid indenture granted); *To have* and to hold, perceive, receive and enjoy all the ſaid prebend, rectory and parſonage, glebe lands, houſes, meadows, paſtures, commons, tithes, tithings, fruits, oblations, obventions, and all other the premiſes whatſoever by the ſaid indenture demiſed, with the appurtenances, (except before excepted) to the ſaid *T. O.* and *H. H.* their executors, adminiſtrators and aſſigns, from the 30th day of *September* then laſt paſt before the date of the ſaid indenture, for, during and unto the full end and term of twenty years and the half of a year and five months thence next enſuing, and fully to be complete and ended: *Yielding* and paying therefore yearly and every year, during the firſt twenty years and the half of a year of the ſaid term, to the ſaid *F. O.* her executors, adminiſtrators and aſſigns, the ſum of yearly rent of 42 *l.* of lawful money of *England*, at the feaſts of the annunciation of the bleſſed virgin *Mary* and St. *Michael* the archangel, by even and equal portions; the firſt payment to begin at the feaſt-day of the annunciation of the bleſſed virgin *Mary* next

Habendum.

Reddendum.

enſuing the date of the ſaid indenture: *And alſo yielding* and paying to the ſaid *F. O.* her executors, adminiſtrators and aſſigns, for the laſt five months of the ſaid term, the ſum or rent of 21 *l.* of like lawful money of *England*, upon the laſt day of the ſaid term, without any deduction, defalcation or abatement to be made of any rent or rents of 16 *l.* 13 *s.* and 4 *d.* payable yearly to the prebendary of *L.* aforeſaid, or the penſion or penſions of 30 *l.* payable yearly to the vicar choral ſtall of the ſaid prebend, or the maſter of the works of the ſaid cathedral church, or the yearly penſion of 5 *l.* 6 *s.* and 8 *d.* to the vicarage of *St. Mary* in *L.* or the penſion or yearly rent of 8 *s.* to the divinity-reader in the ſaid cathedral-church for the time being, or for tenths due to his majeſty or his ſucceſſors for the ſaid prebend, or for any other ſums of money due or to be due for procurations, ſynodals, or any other charges ordinary or extraordinary, which ſhould be due or become due and iſſuing therefrom, or for repairs, or any other taxes, charges, aſſeſſments or incumbrances whatſoever, as by the ſaid indenture amongſt other things more fully appeareth. *By virtue* of which ſaid demiſe the ſaid *T. O.* and *H. H.* afterwards, to wit, on the 10th day of *March* in the year of our Lord 1682. entered into the ſaid demiſed premiſes, with the appurtenances, and were and ſtill are poſſeſſed thereof. *And* 84 *l.* the ſaid rent for the ſaid premiſes, for two years ended at the feaſt of the annunciation of the bleſſed virgin *Mary* laſt paſt, were

Defendants entered.

Rent arrear.

arrear to the ſaid *F.* and ſtill are in arrear and unpaid. *Whereby* an action accrued to the ſaid *F.* to demand and have of the *T. O.* and *H. H.* the ſaid 84 *l.* *Yet* the ſaid *T. O.* and *H.* altho' often requeſted, *&c.* have not, nor hath either of them yet paid the ſaid 84*l.* to the ſaid *F.* but have hitherto intirely refuſed, and ſtill do refuſe, to pay her the ſame, to the damage of the ſaid *F.* of 100*l.* And thereof ſhe bringeth ſuit, *&c.* Actio accrevit.

And the ſaid *T. O.* and *H. H.* by —— their attorney come and defend the force and injury when, *&c.* and ſay, that the ſaid *F. O.* the preſent plaintiff, ought not to have or maintain her ſaid action thereupon againſt them, becauſe they ſay, that after the ſaid demiſe of the ſaid premiſes above ſpecified in the ſaid declaration, and before any rent became due and payable by the ſaid demiſe to the ſaid *F. O.* the preſent plaintiff, *to wit*, on the 20th day of *March* in the year of our Lord 1682. aforeſaid, ſhe the ſaid *F. O.* the preſent plaintiff, with force and arms, *&c.* entered into a certain chamber called the great parlour, parcel of the parſonage-houſe parcel of the ſaid premiſes, with the appurtenances, to the ſaid *T. O.* and *H. H.* in form aforeſaid above demiſed, and not excepted, in and upon the poſſeſſion of the ſaid *T. O.* and *H. H.* thereof, to wit, at *L.* aforeſaid in the county of *S.* aforeſaid, and ejected, expelled and amoved the ſaid *T. O.* and *H. H.* from their poſſeſſion thereof, and held out the ſaid *T. O.* and *H. H.* ſo therefrom ejected, expelled and amoved from their ſaid poſ- *Plea, that the plaintiff entered into part of the demiſed premiſes before any rent was due.*

seſſion thereof, from thence until and after the ſaid feaſt of the annunciation of the bleſſed virgin *Mary* in the ſaid declaration laſt mentioned; and this they are ready to verify: Wherefore they pray judgment, if the ſaid *F. O.* the preſent plaintiff, ought to have or maintain her ſaid action thereupon againſt them, *&c.*

Replication, Non intravit.

And the ſaid *F.* ſaith, that ſhe by any thing by the ſaid *T.* and *H.* above in pleading alledged, ought not to be barred from having her ſaid action thereupon againſt them, becauſe ſhe ſaith, that ſhe the ſaid *F.* did not enter into the ſaid chamber called the great parlour, parcel of the parſonage-houſe parcel of the ſaid premiſes, with the appurtenances, in form aforeſaid, demiſed to the ſaid *T. O.* and *H. H.* nor did ſhe eject, expel and amove them from the ſame, in manner and form as the ſaid *T.* and *H.* above in pleading have alledged; and this ſhe prayeth may be inquired of by the country. *And* the ſaid *T.* and *H.* do ſo likewiſe, *&c.* *Therefore* it is commanded to the ſheriff of the county of *S.* that he cauſe to come before our lord the king and lady the queen at *W.* on —— next after —— twelve, *&c.* of the neighbourhood of *L.* aforeſaid, by whom, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue. Venire *awarded to the ſheriff of the county where the premiſes lie.*

Declaration in debt for rent on a leaſe at will.

Northamptonſhire, to wit, *R. R.* the elder, late of the pariſh of *D.* in the county aforeſaid huſbandman, was ſummoned to anſwer *E. F.* gent. of a plea, that he render to him 100*l.*

100 *l.* which he oweth him and unjuſtly detaineth: And whereupon the ſaid *E.* by *W. L.* his attorney ſaith, that *whereas* the ſaid *E.* on the 29th day of *December* in the year of our Lord 1698. at the pariſh of *D.* aforeſaid, demiſed and to farm let to the ſaid *R.* one meſuage and four yards of land, lying and being in the pariſh of *D.* aforeſaid, and alſo one other yard of land lying and being, *&c.* with the appurtenances, except out of the ſaid demiſe to the ſaid *E. F.* all that little cloſe of meadow called the *Goads cloſe*, &c. *To hold* the ſaid demiſed premiſes, with the appurtenances, (except before excepted) to the ſaid *R.* from thenceforth as long as it ſhould pleaſe both the ſaid parties: *Yielding* and paying therefore to the ſaid *E.* as long as the ſaid *R.* ſhould hold and enjoy the ſaid demiſed premiſes, (except before excepted) after the rate of 50 *l.* of lawful money of *England* by the year, to be paid at the two moſt uſual feaſts, *to wit*, the feaſts of the annunciation of the bleſſed virgin *Mary* and of St. *Michael* the archangel, by even and equal portions. By *virtue* of which ſaid demiſe the ſaid *R.* entered into the ſaid demiſed premiſes with the appurtenances (except before excepted) and was poſſeſſed thereof, and continued poſſeſſed thereof, for one whole year thence next enſuing. *And* 50 *l.* of the ſaid rent, parcel of the ſaid 100 *l.* for the ſaid one year ended at the ſaid feaſt of St. *Michael* the archangel laſt paſt, were in arrear and ſtill are in arrear and unpaid to the ſaid *E.* *Whereby* an action accrued to the ſaid *E.* to demand and have of the ſaid *R.* the ſaid 50 *l.* parcel of the

Habendum.

Reddendum.

Defendant entered.

Rent arrear.

Actio accrevit.

ſaid 100 *l.* *Yet* the ſaid *R.* altho' often requeſted, *&c.* hath not yet rendered to the ſaid *E.* the ſaid 50 *l.* parcel of the ſaid 100 *l.* but hath hitherto intirely refuſed, and ſtill doth refuſe to render the ſame to him. *And alſo whereas* the ſaid *E. F.* on the ſaid 29th day of *September* in the ſaid year of our Lord 1698. at *D.* aforeſaid, demiſed and to farm let to the ſaid *R.* one other meſuage, *&c.* with their appurtenances; *To have and to hold* the ſaid laſt mentioned tenements with the appurtenances to the ſaid *R.* from thenceforth as long as it ſhould pleaſe both the ſaid parties: *Yielding* and paying therefore to the ſaid *E.* as long as the ſaid *R.* ſhould hold and enjoy the ſaid laſt mentioned demiſed premiſes, after the rate of 50 *l.* of lawful money of *England* by the year, at the two moſt uſual feaſts, *to wit*, the feaſts of the annunciation of the bleſſed virgin *Mary* and of St. *Michael* the archangel, by even and equal portions. By *virtue* of which ſaid demiſe the ſaid *R.* afterwards, *to wit*, on the 1ſt day of *October* in the ſaid year of our Lord 1698. laſt mentioned, entered into the ſaid demiſed premiſes with the appurtenances, and was poſſeſſed thereof, and continued poſſeſſed thereof for one whole year thence next enſuing. *And* 50 *l.* of the ſaid rent, reſidue of the ſaid 100 *l.* for the ſaid one year ended at the feaſt of St. *Michael* the archangel laſt paſt, were in arrear, and ſtill are in arrear and unpaid to the ſaid *E.* *Whereby* an action accrued to the ſaid *E.* to demand and have of the ſaid *R.* the ſaid 50 *l.* reſidue of the

Laid over again.

Habendum.

Reddendum.

Defendant enter'd.

Rent arrear.

Actio accrevit.

the ſaid 100*l.* *Yet* the ſaid *R.* altho' often requeſted, *&c.* hath not yet rendered to the ſaid *E.* the ſaid 50*l.* reſidue of the ſaid 100*l.* but hath hitherto intirely refuſed, and ſtill doth refuſe to render the ſame to him, to the damage of the ſaid *E.* of 50*l.* And thereof he bringeth ſuit, *&c.*

Leiceſterſhire, to wit, Sir *N. C.* bart. complaineth of *W. F.* eſq; in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king and lady the queen, before the ſaid king and queen, of a plea that he render to him 280*l.* of lawful money of *England*, which he oweth him and unjuſtly detaineth; *for that*, to wit, that *whereas* the ſaid Sir *N.* on the 24th day of *March* in the fourth year of the reign of our late ſovereign lord *James* II. late king of *England*, &c. at *F.* in the county aforeſaid, had demiſed, granted, and to farm let, unto the ſaid *W.* the ſeveral cloſes or parcels of land of the ſaid Sir *N.* following, *to wit*, the weſt meadow at the end of the mill, the *Mill's cloſe*, otherwiſe *Mile's cloſe*, the *Hall-cloſe*, the *Red-field*, the *Lilly-cloſe*, the *Gate-cloſe*, the *Warren*, the *Furzy-cloſe*, the *Middle-cloſe*, and the *Highway-cloſe* lying and being in *F.* aforeſaid in the county aforeſaid; *To have* and to hold the ſaid ſeveral cloſes or parcels of land, with the appurtenances, to the ſaid *W.* and his aſſigns, from the ſaid 24th day of *March* in the fourth year aforeſaid, unto the end and term of one whole year thence next enſuing and fully to be complete and ended: *Yielding* and paying therefore to the ſaid Sir *N.* and his aſſigns

Declaration in debt for rent.

Habendum.

Reddendum.

the rent or ſum of 280*l.* of lawful money of *England*. *By virtue* of which ſaid demiſe the ſaid *W.* entered into the ſaid tenements with the appurtenances, and was poſſeſſed thereof, and had, held and occupied the ſaid tenements with the appurtenances. *And* the ſaid 280*l.* for the ſaid year ended at the feaſt of the annunciation of the bleſſed virgin *Mary*, in the firſt year of the reign of our ſovereign lord and lady *W.* and *M.* now king and queen of *England*, &c. were and ſtill are in arrear and unpaid: *Whereby* an action accrued to the ſaid Sir *N.* to demand and have of the ſaid *W.* the ſaid 280*l.* *Yet* the ſaid *W.* altho' often requeſted, *&c.* hath not yet paid the ſaid 280*l.* to the ſaid Sir *N.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid Sir *N.* of 100*l.* And thereof he bringeth ſuit, *&c.*

Defendant entered.

Rent arrear.

Actio accrevit.

Plea, Nil habuit in tenementis. 3 Lev. 193, 146. 2 Vent. 251. Pract. Reg. 214. Townſ. tabl. 149.

And the ſaid *W.* by ——— his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid Sir *N.* at the time of the ſaid demiſe in the ſaid declaration mentioned, had nothing in the ſaid tenements whereof he was able to make the ſaid demiſe; and this the ſaid *W.* is ready to verify: Wherefore he prayeth judgment if the ſaid Sir *N.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Replication.

Judgment in C.B. *recovered by plaintiff's*

And the ſaid Sir *N.* ſaith, that he by any thing by the ſaid *W.* above in pleading alledged, ought not to be barred from having his ſaid action thereupon againſt him; *becauſe* he ſaith that heretofore, *to wit*, in the term of St.

St. *Michael* in the 32d year of the reign of our late ſovereign lord *Charles* II. late king of *England*, &c. one Sir *J. C.* knt. and bart. deceaſed, in his life-time, in the court of Common bench at *W.* before Sir *F. N.* and his companions, then juſtices of the ſaid late king of the bench aforeſaid, at *W.* in the county of *M.* by the conſideration of the ſame court recovered againſt *G. F.* eſq; by the name of *G. F.* of *F.* in the county of *L.* eſq; as well a certain debt of 2000 *l.* as 40 *s.* which then in the ſaid court of Common bench were adjudged to the ſaid Sir *J. C.* for his damages which he had as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *G.* was convicted, as by the record and proceſs thereupon remaining of record in the ſaid court of Common bench at *W.* more plainly appeareth; which ſaid judgment was had and obtained for a true and juſt debt due to the ſaid Sir *J. C.* by the ſaid *G. F.* and then and ſtill no ways paid or ſatisfied; and the ſaid judgment had and obtained in form aforeſaid, then remained in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid Sir *N.* further in fact ſaith, that the ſaid Sir *J. C.* in his life-time afterwards, *to wit*, on the 28th day of *November* in that ſame term, came into the ſaid court of Common bench at *W.* aforeſaid by *J. D.* his attorney, and by the ſtatute in ſuch caſe made and provided, choſe to be delivered to him all the goods and chattels

teſtator againſt defendant's anceſtor.

Elegit *prayed and awarded.*

of

of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all his lands and tenements, to keep the ſaid goods and chattels as his own proper goods and chattels, and alſo to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the ſaid debt and damages ſhould be thereof levied; and he prayed the writ of our late ſovereign lord *Charles* II. late king of *England*, &c. to be directed to the ſheriff of *L.* and it was granted to him, returnable in the ſame court of Common bench at *W.* aforeſaid on the octave of St. *Hilary*, &c. *At which day* the ſaid Sir *J. C.* by his ſaid attorney came into the ſame court, and the ſheriff did nothing thereupon, and did not ſend the ſaid writ. *Therefore*, as before, another writ was made out to him thereupon in form aforeſaid, returnable in the ſame court on the morrow of the *Holy Trinity*, &c. *At which day* the ſaid Sir *J. C.* by his ſaid attorney came into the ſaid court, and the ſheriff, *to wit*, *J. D.* eſq; the returned there a certain inquiſition taken before him at *B.* in the ſaid county of *L.* on the 30th day of *May* then laſt paſt, by the oath of twelve, *&c.* by whom it was found that the ſaid *G.* on the day of taking the ſaid inquiſition was ſeiſed in his demeſne of fee, of and in one cloſe of paſture with the appurtenances in *F.* in the ſaid county of *L.* called *Mile's cloſe*, containing by eſtimation eight acres or thereabouts, then or late in the tenure or occupation of the ſaid *G.* or his aſſigns, of the clear yearly value in

Vic. non miſit breve.

Alias *awarded.*

The return.

iſſues above repriſes of 60 *s.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid in the ſaid county of *L.* called *Hall cloſe*, containing by eſtimation eighteen acres or thereabouts, then or late in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 10 *l.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid in the county aforeſaid, called *Red-field*, containing by eſtimation 140 acres or thereabouts, then or late in the poſſeſſion of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 40 *l.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid in the county aforeſaid called *Kilby-cloſe*, containing by eſtimation ſixty-eight acres of land or thereabouts, then or late in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 30 *l.* [*All the ſeveral parcels recited in the ſame manner*] and that the ſaid cloſe called *Mill's cloſe* in *F.* aforeſaid in the county aforeſaid, the ſaid cloſe called *Hall's cloſe*, the ſaid cloſe called *Redfield*, the ſaid cloſe called *Kilby*, the ſaid cloſe called the *Gate-cloſe*, the ſaid cloſe called the *Warren*, the ſaid cloſe called the *Furzy-cloſe*, the ſaid cloſe called the *Middle-cloſe*, the ſaid cloſe called the *Highway-cloſe*, the ſaid cloſe called the *Weſt-meadow* at the end of the mill, being all in the occupation of the ſaid *G. F.* or his aſſigns, and lying and being in *F.* aforeſaid in the ſaid county of *L.* are one juſt and

equal

equal moiety of the ſaid meſſuages, lands and tenements. *Which* ſaid moiety the ſaid ſheriff on the ſaid day of taking the ſaid inquiſition, by virtue of the ſaid writ ſo as aforeſaid directed to him, cauſed to be delivered to the ſaid Sir *J. C.* bart. to hold to him and his aſſigns as his freehold, until the ſaid debt and damages ſhould be fully levied, as by the ſaid writ he was commanded. *And* the ſaid Sir *N.* further ſaith, that the ſeveral cloſes and parcels of land laſt mentioned, *to wit*, the *Mill's cloſe*, the *Hall-cloſe*, the *Red-field*, *Kilby-cloſe*, the *Gate-cloſe*, the *Warren*, the *Furzy-cloſe*, *Middle-cloſe*, *Highway-cloſe*, the weſt meadow at the end of the mill, are the ſame cloſes in the ſaid declaration above mentioned to be demiſed to the ſaid *W. In-to* which ſaid cloſes with the appurtenances the ſaid Sir *J. C.* entered in his life-time by virtue of the ſaid delivery, and was ſeiſed thereof as of his freehold until, *&c.* *And* being ſo thereof ſeiſed, the ſaid Sir *J. C.* afterwards, *to wit*, on the 1ſt day of *December* in the year of our Lord 1686. at *L.* in the county of *L.* aforeſaid, made his teſtament and laſt will in writing, and by the ſame conſtituted and appointed the ſaid Sir *N.* executor of his ſaid teſtament, and afterwards died there ſo ſeiſed as aforeſaid. *After* whoſe death the ſaid Sir *N.* proved the ſaid teſtament of the ſaid Sir *J.* in due form of law, and took upon him the burthen of the execution of the ſame: And the ſaid Sir *N.* entered into the ſaid cloſes laſt mentioned with the appurtenances, and was ſeiſed thereof

A moiety of the lands delivered.

Which are the lands mentioned in the declaration.

Plaintiff's father entered.

Made his will, and plaintiff executor, and died.

Plaintiff proved the will and entered.

of as of his freehold until, &c. *And* that at the time of the demiſe in the ſaid declaration above-mentioned, or at any time afterwards, he had not levied the ſaid debt and damages, or any part thereof. *And* ſo the ſaid Sir *N.* ſaith, that he at the time of the demiſe in the ſaid declaration above-mentioned had a good and ſufficient eſtate in the ſaid tenements with the appurtenances, whereof he could make the ſaid demiſe of the ſaid tenements with the appurtenances to the ſaid *W.* And this he is ready to verify: Wherefore he prayeth judgment and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, &c.

Debt and damages not levied.

And ſo plaintiff had a good eſtate to demiſe.

And the ſaid *W.* ſaith, that long before the recovery of the ſaid judgment by the ſaid Sir *J. C.* againſt the ſaid *G. F.* mentioned in the replication of the ſaid Sir *N. to wit*, in the term of the *Holy Trinity* in the 26th year of the reign of our late ſovereign lord *Charles* II. late king of *England*, &c. one *W. B.* eſq; and *W. R.* eſq; then debtors of our ſaid late ſovereign lord *Charles* II. then king of *England*, &c. came into the court of Exchequer of our then ſaid ſovereign lord *Charles* II. at *W.* before the barons of the ſaid Exchequer, on the 8th day of *July* in the ſame term, by *T. H.* then their attorney, and then complained by bill againſt the ſaid *G. F.* by the name of *G. F.* eſq; then preſent in court on the ſame day, of the plea that he ſhould render to them 600 *l.* which he owed them and unjuſtly detained, for that, to wit, that whereas

Rejoinder. A prior judgment in Scacc. *recovered by two ſtrangers againſt defendant's anceſtor.*

whereas the ſaid *G. F.* on the laſt day of *May* in the 26th year of the reign of our ſaid ſovereign lord the late king, at *L.* to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, had borrowed of the ſaid *W. B.* and *W. R.* the ſaid 6000*l.* to be paid to the ſaid *W. B.* and *W. R.* when he ſhould be thereunto afterwards required: Yet the ſaid *G. F.* altho' often requeſted, had not then rendered the ſaid 6000*l.* to the ſaid *W. B.* and *W. R.* but had intirely refuſed, and then did refuſe to render the ſame to them or to either of them: Wherefore the ſaid *W. B.* and *W. R.* then ſaid that they were injured, and had damage to the value of 100*l.* Whereby the ſaid *W. B.* and *W. R.* were the leſs able to ſatisfy our ſaid ſovereign lord the then king the debts which they then owed to our ſaid then lord the king, at his ſaid Exchequer, as they ſaid; and thereof they brought ſuit, *&c.* And they then found pledges for proſecuting, *J. D.* and *R. R.*

By Cognovit actionem.

And the ſaid *G. F.* by *R. O.* then his attorney, came and defended the force and injury when, *&c.* and then prayed oyer of the ſaid bill, and it was read to him, *&c.* Which being read and heard, the ſaid *G.* then ſaid that he could not deny the ſaid action of the ſaid *W. B.* and *W. R.* nor but that he owed to the ſaid *W. B.* and *W. R.* the ſaid 6000*l.* in manner and form as the ſaid *W. B.* and *W. R.* by their ſaid declaration then declared againſt him. Therefore it was then conſidered by the barons there, that the ſaid *W. B.* and *W. R.* ſhould recover againſt the ſaid *G. F.*

G. F. their ſaid debt, and alſo their damages by occaſion of the detaining that debt to 30*s.* adjudged by the ſaid court to the ſaid *W. B.* and *W. R.* by their aſſent; and that the ſaid *G. F.* ſhould be in mercy, *&c.* as by the record and proceſs thereupon remaining in the ſaid court of Exchequer, of the ſaid late king at *Weſtminſter* more fully appeareth; which ſaid judgment was had and obtained in form aforeſaid, for a true and juſt debt then due, by the ſaid *G. F.* to the ſaid *W. B.* and *W. R.* and to this time no ways paid or ſatisfied; and the ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid *W. B.* and *W. R.* ſaid that they, the ſaid *W. B.* and *W. R.* afterwards came into the court of Exchequer of the ſaid late king, and by the ſtatute in ſuch caſe preſcribed, choſe to be delivered to them, all the goods and chattels of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all the lands and tenements of the ſaid *G.* to keep the ſaid goods and chattels as their own proper goods and chattels, and alſo to hold the ſaid moiety as their freehold, to them and their aſſigns, according to the form of the ſaid ſtatute, until they ſhould thereof levy the ſaid debt and damages. Whereupon, afterwards, to wit, on the 29th day of *November* in the term of St. *Michael* in the 27th year of the reign of our ſaid late ſovereign lord *Charles* the ſecond, late king of *England*, by the writ of the ſaid late king, of *Elegit*, proſecuted for and upon the ſaid judgment, directed

Elegit *prayed and awarded.*

directed to the ſaid then ſheriff of the county of *Leiceſter*, it was commanded to the ſaid then ſheriff of the county of *Leiceſter*, that without delay he cauſe to be delivered to the ſaid *W. B.* and *W.* by a reaſonable price and extent, all the goods and chattels of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all the lands and tenements in his bailiwic, whereof the ſaid *G.* was ſeiſed on the morrow of the *Holy Trinity* in the 26th year of the reign of the ſaid late king of *England*, &c. on which day the ſaid judgment was given, or at any time afterwards, to keep the ſaid goods and chattels as their own proper goods and chattels; and alſo to hold the ſaid moiety as their freehold to them and their aſſigns according to the form of the ſaid ſtatute, until they ſhould thereof levy the ſaid debt and damages: And the ſaid ſheriff was commanded to make appear to the barons of the ſaid Exchequer at *Weſtminſter*, on the octave of the purification of the bleſſed virgin *Mary* then next enſuing, under his ſeal and the ſeals of them by whoſe oath he ſhould make the ſaid extent and appraiſement, in what manner the ſaid writ ſhould be executed, together with the names of them, by whoſe oath he ſhould make that extent and appraiſement, and the ſaid writ. *At which day*, the ſaid *W. B.* and *W. R.* came into the ſaid court in their proper perſons, and the ſheriff, to wit, *W. C.* eſq; then ſheriff of the ſaid county of *Leiceſter*, returned, that the ſaid *G. F.* had no goods or chattels, in his bailiwic,

Return.

Nulla bona.

wic, whereof he could cauſe to be made the ſaid debt or any part thereof: And he further returned upon the ſaid writ, a certain inquiſition, taken before him at the borough of *Leiceſter* in the ſaid county of *Leiceſter*, on the 3d day of *February* in the 28th year of the reign of our ſaid late ſovereign lord king *Charles* II. by the oath of *E. B. T. H. &c.* [*naming all the jurors*] good and lawful men of his county, who being ſworn and charged upon their ſaid oath, ſaid, that the ſaid *G. F.* eſq; in the ſaid writ named, at the time of giving the ſaid judgment ſpecified in the ſaid writ, *to wit*, on the morrow of the *Holy Trinity* in the 26th year of the reign of the ſaid late king *Charles* II. the time of giving the ſaid judgment, was ſeiſed, and then ſtood ſeiſed in his demeſne as of fee, of and in one capital meſuage, with the appurtenances, ſituate, lying and being in *F.* in the county aforeſaid, then in the tenure or occupation of the ſaid *J. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of ten ſhillings, and of and in one cloſe of paſture, with the appurtenances in *F.* aforeſaid in the county aforeſaid, called the *Barn-yard*, containing by eſtimation two acres, in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of ten ſhillings, and of and in one cloſe of paſture with the appurtenances in *F.* aforeſaid in the county aforeſaid, called *Mill's cloſe*, containing by eſtimation, *&c.* [*writing all the particulars*] *Which* ſaid capital meſuage, with the

An inquiſition.

Moiety of the lands delivered.

the appurtenances, the ſaid cloſe called *Barn-yard*, the ſaid cloſe called *Mill's cloſe*, the ſaid cloſe called *Hall's cloſe*, the ſaid cloſe called *Redfield*, the ſaid cloſe called *Kilby-cloſe*, the ſaid cloſe called *Gate-cloſe*, the ſaid cloſe called the *Warren*, the ſaid cloſe called *Furzy-cloſe* [*with ſome others recited*] with all and ſingular their appurtenances, are one equal moiety of all and ſingular the ſaid demiſed meſuages, lands and tenements, which ſaid moiety, he the ſaid ſheriff, on the day of taking the ſaid inquiſition by virtue of the ſaid writ, cauſed to be delivered to the ſaid *W. B.* and *W. R.* in the ſaid writ mentioned, to hold to them and their aſſigns, as their freehold, until the debt and damages in the ſaid writ named, ſhould be thereof fully levied, as by the ſaid writ he was commanded: And the ſaid *W.* further ſaith, that the ſaid ſheriff further returned, that the ſaid jurors upon their ſaid oath further ſaid, that the ſaid *G. F.* in the ſaid writ mentioned, had not, nor had on the day of taking the ſaid inquiſition and giving the ſaid judgment, or at any time afterwards, any other or more meſuages, lands or tenements, or any goods or chattels in his bailiwic, to the knowledge of the ſaid jurors, or by any evidence ſhewn to them, as by the ſaid writ, return and inquiſition aforeſaid, affiled of record in the ſaid court of Exchequer of our ſaid late lord king *Charles* II. more fully appeareth. *And* the ſaid *W. F.* further ſaith, that the ſeveral cloſes and parcels of land, *to wit*, the *Mile's cloſe*, the *Hall's cloſe*, the *Redfield*,

The lands delivered and the lands in the declaration the ſame.

Redfield, the *Kilby-close*, the *Gate-close*, the *Warren*, the *Furzy-close*, the *Highway-close*, the *West meadow* at the bridge, the *West meadow* at the end of the *Middle close*, parcel of the closes and tenements in the said inquisition mentioned, and by the said sheriff of the said county of *Leicester*, delivered by the said inquisition to the said *W. B.* and *W. R.* to hold to them and their assigns, until they should fully levy the said debt and damages due to them, and the closes in the said declaration mentioned to be demised, by the said Sir *N.* to the said *W. F.* are one and the same closes, and not other nor different. *Into* which said closes, with the appurtenances, the said *W. B.* and *W. R.* by virtue of the said delivery, before the demise in the said declaration mentioned to have been made by the said Sir *N.* to the said *W. F.* entered, and were seised thereof, as of their freehold until, *&c.* *And* being so seised thereof, the said *W. R.* afterwards, *to wit*, on the first day of *February* in the year of our Lord 1697, at *F.* aforesaid in the said county of *Leicester* died, and the said *W. B.* survived him, and held himself in by right of survivorship. *And* the said *W. F.* further saith, that neither the said *W. B.* and *W. R.* or either of them, in the life-time of the said *W.* had levied, nor had either of them levied the said debt and damages, neither hath the said *W. B.* since the death of the said *W. R.* yet levied the said debt and damages, but great part thereof, to wit, the sum of 5000 *l.* and more still remains due

The Plaintiffs in the action entered before the Plaintiff's demise.

The one dies, the survivor holds jure accrescendi.

Their debt not levied,

to the ſaid *W. B.* no ways levied or ſatisfied.

And ſo plaintiff had no title to demiſe.

And ſo the ſaid *W. F.* ſaith, that the ſaid Sir *N.* at the time of the ſaid demiſe, in the ſaid declaration above-mentioned, had not a good and ſufficient eſtate in the ſaid tenements, with the appurtenances, out of which he could make the ſaid demiſe of the ſaid tenements, with the appurtenances, to the ſaid *W. F.* And this the ſaid *W. F.* is ready to verify: Wherefore the ſaid *W. F.* (as before) prayeth judgment if the ſaid Sir *N.* ought to have or maintain his ſaid action againſt him.

Surrejoinder, That the judgment was obtained per fraudem.

And the ſaid Sir *N.* ſaith, that the ſaid judgment in form aforeſaid had and obtained by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained by fraud and covin then before had between the ſaid *W. B.* and *W. R.* the ſaid *G. F.* at *F.* aforeſaid in the ſaid county of *Leiceſter*, to defraud the ſaid Sir *N.* and other creditors of the ſaid *G.* of their true and juſt debts; and this he is ready to verify: Wherefore (as before) he prayeth judgment and his ſaid debt, together with his damages, by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Rebutter,

The judgment was for a juſt debt.

And the ſaid *W.* ſaith, that the ſaid judgment had and obtained in form aforeſaid by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained for a true and juſt debt, due to the ſaid *W. B.* and *W. F.* by the ſaid *G. F.* *Without* this, that the ſaid judgment had and obtained in form aforeſaid, by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.*

Traverſe.

G. F. was had and obtained by fraud and covin before had between the ſaid *W. B.* and *W. R.* and the ſaid *G. F.* to defraud the ſaid Sir *N.* and other creditors of the ſaid *G.* of their true and juſt debts, in manner and form as the ſaid Sir *N.* hath above pleaded in ſurrejoining; and this he is ready to verify: Wherefore (as before) he prayeth judgment, and that the ſaid Sir *N.* may be barred from having his ſaid action thereupon againſt him the ſaid *W.* *&c.*

And the ſaid Sir *N.* (as before) ſaith, that the ſaid judgment, in form aforeſaid had and obtained by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained by fraud and covin before had between the ſaid *W. B.* and *W. R.* and the ſaid *G. F.* to defraud the ſaid Sir *N.* and the other creditors of the ſaid *G. F.* of their true and juſt debts, in manner and form as the ſaid Sir *N.* hath above in ſurrejoining pleaded, to wit, at *F.* aforeſaid in the county of *Leiceſter* aforeſaid; and this he prayeth may be inquired of by the country: *And* the ſaid *W. F.* doth ſo likewiſe, *&c.* Therefore let a jury thereupon come before our lord the king, and lady the queen, at *Weſtminſter*, on —— next after ——— And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Surrebutter maintains the Surrejoinder.

Iſſue. Venire *awarded.*

Middleſex, to wit, *M. W.* late of *London*, widow, executrix of the teſtament and laſt will of *E. W.* of the pariſh of *St. Giles Cripplegate* in the county of *M.* graſier, was ſummoned

Declaration in debt againſt an executrix for rent incurred in her own time.

moned to anſwer *H. T.* of a plea, that ſhe render to him 36*l.* 5*s.* which ſhe *oweth* him, and unjuſtly detaineth, &c. And whereupon the ſaid *H.* by *W. M.* his attorney ſaith,

Articles. *that whereas* by certain articles of agreement, made at the ſaid pariſh of *St. Giles Cripplegate*, on the 23d day of *October* in the year of our Lord 1689, between the ſaid *H. T.* by the name of *H. T.* citizen and blackſmith of *London*, of the one part, and the ſaid *E.* by the name of *E. W.* of the pariſh of *St. Giles Cripplegate* in the county of *M.* graſier,

Profert. of the other part, *the* counterpart of which ſealed with the ſeal of the ſaid *E.* the ſaid *H.* bringeth here into court, the date whereof

Demiſe. is on the ſame day and year, *the* ſaid *H.* demiſed, granted, ſet and to farm let, to the ſaid *E.* all thoſe ſix acres of meadow, more or leſs, lying and being in the common field called the *Peſthouſe-field*, and in a field near a certain houſe called the *Halfway-houſe*, and in a field called the *Conduit-field*, in the ſeveral pariſhes of *St. Giles Cripplegate* aforeſaid, and *St. Leonard Shoreditch*, in the ſaid county of *M.*

Habendum. *To hold* and occupy to the ſaid *E.* his executors, adminiſtrators and aſſigns, from the feaſt of the nativity of our Bleſſed Lord and Saviour then next enſuing, for the term of 7 years thence next enſuing, and fully to

Reddendum. be complete and ended; *Yielding* and paying therefore yearly the ſum of 3*l.* and 10*s.* for every acre of the ſaid land, being in the whole 21*l.* by even and equal portions quarterly at the feaſt of the annunciation of the bleſſed virgin *Mary*, the feaſt of the nativity

of

of St. *John* the baptiſt, the feaſt of St. *Michael* the archangel, and the feaſt of the nativity of our Lord, as by the ſaid articles amongſt other things more fully appears; By virtue of which demiſe the ſaid *E.* entered into the tenements and premiſes above demiſed, with the appurtenances, and was poſſeſſed thereof. *And* being ſo thereof poſſeſſed, the ſaid *E.* afterwards, to wit, on the 1ſt day of *March* in the 6th year of the reign of our ſovereign lord *William*, now king, and ſovereign lady *Mary*, late queen of *England*, *&c.* at the ſaid pariſh of *St. Giles Cripplegate*, made his teſtament and laſt will in writing, and conſtituted and appointed the ſaid *M.* executrix of the ſaid teſtament, and afterwards died there, ſo thereof poſſeſſed, after whoſe death, the ſaid *M.* there took upon her the burthen of the execution of the ſaid teſtament; *And* afterwards, to wit, on the ſame day and year, entered into the ſaid tenements and premiſes above demiſed and granted, and was poſſeſſed thereof by reaſon of the execution of the ſaid teſtament; and 36*l.* 5*s.* of the ſaid rent for one year and three quarters of a year at the feaſt of St. *Michael* the archangel in the 7th year of the reign of our ſovereign lord the preſent king, were in arrear to the ſaid *H.* and are ſtill unpaid; *whereby* an action accrued to the ſaid *H.* to demand and have of the ſaid *M.* the ſaid 36*l.* 5*s.* *Yet* the ſaid *M.* although often requeſted, *&c.* hath not yet paid the ſaid 36*l.* to the ſaid *H.* but hath hitherto refuſed, and ſtill doth refuſe

Teſtator entered.

Makes his will, and defendant executrix, and dies.

Defendant enters.

Actio accrevit.

fuſe to pay him the ſame. Wherefore he ſaith he is injured, and hath damage to the value of 40 *l.* And thereof he bringeth ſuit, *&c.*

Plea. Teſtator aſſigned the term.

And the ſaid *M.* by *F. R.* her attorney, cometh and defendeth the force and injury when, *&c.* And ſaith that the ſaid *H. T.* ought not to have or maintain his ſaid action thereupon, againſt her; *becauſe* ſhe ſaith, that after the making the ſaid articles in the ſaid declaration mentioned, the ſaid *E. W.* in his life-time, by his certain writing ſealed with his ſeal, made at the ſaid pariſh of *St. Giles Cripplegate* in the county aforeſaid, on the 21ſt day of *January* in the year of our Lord 1692. *which* the ſaid *M.* bringeth here into court, for and in conſideration of the ſum of 18 *l.* 5 *s.* 6 *d.* to the ſaid *E.* in hand paid by one *R. H.* bargained, ſold and aſſigned to the ſaid *R. H.* All his eſtate, right, title and property, claim and demand whatſoever, of, in, to or out of the ſaid demiſed premiſes, by force or virtue of the ſaid written leaſe or inſtrument, or otherwiſe howſoever; *By virtue* whereof he the ſaid *R.* afterwards, to wit, on the 1ſt day of *February* in the year of our Lord 1692, entered into the ſaid demiſed premiſes, ſo as aforeſaid, bargained, ſold and aſſigned to him with the appurtenances, and was, and ſtill is poſſeſſed thereof. *And* the ſaid *M.* further ſaith, that he the ſaid *E. W.* in his life-time, afterwards, to wit, on the 10th day of *February* in the year laſt aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, gave notice to the ſaid *H.* of the ſaid aſſignment ſo made

Profert.

Leſſee entered.

Teſtator gave notice to Plaintiff.

to

to the ſaid *H.* as aforeſaid: And this the ſaid *M.* is ready to verify. Wherefore ſhe prayeth judgment, if the ſaid *H.* ought to have or maintain his ſaid action thereupon againſt her, *&c.*

The plaintiff did not dare to go on becauſe the declaration ſhould have been in the Detinet *only, and not in the* Debet and Detinet. Sed Q.

Middleſex, to wit, Sir *T. A. P.* bart. and *E.* his wife, executrix of the teſtament and laſt will of Sir *J. D.* knt. of the *Bath*, her late father deceaſed, complaineth of Sir *J. J.* knt. otherwiſe lately called *J. J.* of *Scotland-yard* in the county of *M.* eſq; in the cuſtody of the marſhal, *&c.* of a plea that he render to them 30 *l.* of lawful money of *England*, which he unjuſtly detaineth from them for that, to wit, that *whereas* the ſaid Sir *J. D.* in his life-time, to wit, on the twelfth day of *November* in the 19th year of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* at the pariſh of *St. Martin in the fields* in the ſaid county of *M.* by his certain indenture made between the ſaid Sir *J. D.* by the name of the honourable Sir *J. D.* knt. of the *Bath*, of the one part, and the ſaid Sir *J. J.* by the name of *J. J.* of *Scotland-yard* in the county of *M.* of the other part, *the* counterpart of which, ſealed with the ſeal of the ſaid Sir *J. J.* the ſaid Sir *T.* and *E.* bring here into court, the date whereof is on the ſame day and year aforeſaid, had demiſed, granted, and to farm let, to the ſaid Sir *J. J.* All thoſe chambers, cellars, cloſets,

Declaration in debt by baron and feme executrix, for rent due after teſtator's death.

The indenture of leaſe.

Profert.

Demiſe.

closets, kitchen, coal-house, coach-house, yard and piece of land, and other rooms of the said Sir *J. D.* then in the occupation of the said Sir *J. J.* and situate and being in *Scotland-yard* aforesaid, near *Whitehall* in the said parish of *St. Martin in the fields* in the county of *M.* aforesaid, together with all ways, passages, lights, easements and appurtenances to the same premises belonging; *To have* and to hold the said premises, with the appurtenances, to the said Sir *J. J.* his executors, administrators and assigns, from the feast-day of St. *Michael* the archangel then last past, unto the full end and term of 30 years thence next ensuing and fully to be complete and ended; *Yielding* and paying therefore, during the first two years and three quarters of a year, of the said term of thirty years, to the said Sir *J. D.* his executors, administrators and assigns, the yearly rent of one pepper-corn, at the feast of St. *Michael* the archangel, if the same should be lawfully demanded; and yielding and paying also to the said Sir *J. D.* his executors, administrators and assigns, during the residue of the said term of 30 years, the yearly rent of 60 *l.* of lawful money of *England*, at the feast of St. *Michael* the archangel, the nativity of our Lord God, the annunciation of the blessed virgin *Mary*, and the nativity of St. *John* the baptist; as by the said indenture amongst other things more fully appears; *By virtue* of which said demise the said Sir *J. J.* afterwards, to wit, on the 1st day of *January* in the 19th year aforesaid,

Habendum.

Reddendum.

Defendant entered.

foreſaid, entered into the premiſes aforeſaid with the appurtenances, and was and ſtill is poſſeſſed thereof. *And* the ſaid Sir *J. D.* afterwards, to wit, on the 13th day of *March* in the year of our Lord 1668, in the ſaid pariſh of *St. Martin in the fields* in the county of *M.* aforeſaid, made his teſtament and laſt will in writing, and by the ſame conſtituted and appointed the ſaid *E.* ſole executrix thereof; and afterwards, to wit, on the laſt day of *May* in the year of our Lord 1670, at the ſaid pariſh of *St. Martin in the fields* in the county of *M.* aforeſaid died; after the death of which ſaid *J. D.* ſhe the ſaid *E.* took upon her the execution of that teſtament, and afterwards, to wit, on the th day of *May* in the year of our Lord laſt aboveſaid, at the ſaid pariſh of *St. Martin in the fields* in the county of *M.* aforeſaid, in due form of law proved the ſaid will; and afterwards, to wit, on the 1ſt day of *May* in the 29th year of the reign of our ſaid ſovereign lord the preſent king, at the ſaid pariſh of *St. Martin in the fields* in the county of *M.* aforeſaid, married the ſaid Sir *T.* *And* 30 *l.* for rent of the ſaid premiſes, for half a year ended at the feaſt of the nativity of St. *John* the baptiſt laſt paſt, were in arrear to the ſaid Sir *T.* and *E.* after the death of the ſaid Sir *J. D.* and after the marriage between the ſaid Sir *T.* and *E.* celebrated, and ſtill are in arrear and unpaid: *Whereby* an action accrued to the ſaid Sir *T.* and *E.* to demand and have of the ſaid Sir *J. J.* the ſaid 30 *l.* *Yet* the ſaid Sir *J. J.* altho'

Teſtator made his will, and plaintiff E. *executrix,*

and died.

She proves the will.

And marries the plaintiff Sir T.

Rent arrear.

Actio accrevit.

altho' often requeſted, *&c.* hath not yet paid the ſaid 30*l.* to the ſaid Sir *T.* and *E.* or to either of them, but to pay the ſame to them or to either of them hath intirely refuſed, and ſtill doth refuſe, and unjuſtly detaineth, to the damage of the ſaid Sir *T.* and *E.* of 60 *l.* And thereof they bring ſuit, *&c.* *And* the ſaid Sir *T. A. P.* and *E.* bring here into court the letters teſtamentary of the ſaid Sir *J. D.* by which it ſufficiently appeareth to the court here, that the ſaid *E.* is executrix of the ſaid teſtament, *&c.*

Profert *of the letters teſtamentary.*

Declaration in debt for rent on a leaſe parol.

Warwickſhire, to wit, *W. B.* late of *Ilmington* in the county of *W.* aforeſaid, yeoman, was ſummoned to anſwer *R. H.* of a plea, that he render to her 74 *l.* of good and lawful money of *Great Britain*, which he oweth her, and unjuſtly detaineth from, *&c.* And whereupon the ſaid *R.* by *R. S.* her attorney ſaith, that whereas ſhe, on the 2d day of *December* in the 3d year of the reign of our lord the now king, at *Stratford* in the ſaid county, did demiſe to the ſaid *W.* one meſuage and 50 acres of land, meadow and paſture, with the appurtenances, in *Ilmington* in the county aforeſaid; to have and to hold to him and his aſſigns, from the firſt day of *November* then laſt paſt to the full end and term of one whole year from thence next enſuing and fully to be complete and ended, and ſo from year to year, as long as both parties ſhould pleaſe; yielding and paying therefore yearly, and every year, to the ſaid *R.* the rent of 25*l.* on the 1ſt day of *May*,

May, and the firſt day of *November*, by even and equal portions; the firſt payment to be made on the 1ſt day of *May* then next enſuing; by virtue of which ſaid demiſe the ſaid *W.* entered upon the ſaid tenements, with the appurtenances, and enjoyed the ſame: And the ſum of 74*l.* rent for three years, on the 1ſt day of *November* in the year of our Lord 1733. was due in arrear to the ſaid *R.* and ſtill is unpaid; whereby an action accrued to the ſaid *R.* to demand and have of the ſaid *W.* the ſaid 74*l.* rent; yet the ſaid *W.* though often requeſted, hath not rendered the ſaid 74*l.* to the ſaid *R.* but hath refuſed, and ſtill doth refuſe, to render the ſame to her, to the damage of the ſaid *R.* of 10*l.* And thereof ſhe bringeth ſuit, *&c.*

And the ſaid *A. H.* ſaith, that he by any thing by the ſaid *J.* above in pleading alledged ought not to be barred from having his ſaid action thereupon againſt the ſaid *J.* becauſe he ſaith, that the ſaid *T. F.* in his life-time, to wit, at the time of making the ſaid writing obligatory, and alſo on the firſt day of *April* in the 7th year of the reign of *William* III. late king of *England*, *&c.* and before, was warden of the priſon of the ſaid late king, of the *Fleet*, to wit, at *London* aforeſaid, in the pariſh of St. *Mary le Bow* in the ward of *Cheap*. And the ſaid *J. T.* for the whole time aforeſaid, to wit, on and before the ſaid 1ſt day of *April*, and alſo at the time of making the ſaid writing obligatory, was a ſervant under the ſaid *T. F.* having

Replication, that the defendant being a ſervant of the warden of the Fleet, *permitted a priſoner to eſcape.*

ving and exerciſing the care and cuſtody o
the ſaid priſon and the priſoners thereto com
mitted, to wit, at the pariſh and ward afore
ſaid; and that the ſaid *T.* was ſo warden o
the ſaid priſon, and the ſaid *J.* as before ſai
had and exerciſed the care and cuſtody of th
ſaid priſon and the priſoners thereto com
mitted; and lately before the making th
ſaid writing obligatory, to wit, on the ſam
1ſt day of *April* beforementioned, at th
pariſh and ward aforeſaid, one *F. H.* gen
was a priſoner in the ſaid priſon of the *Fl*
in execution, at the ſuit of one Sir *A. H*
knt. for a certain debt of 1000*l.* 46*s.* f
damages, and then and there without th
licence, and againſt the proper will of th
ſaid *T. F.* and with the licence and permi
ſion of the ſaid *J. T.* eſcaped out of the ſai
priſon; the ſaid Sir *A.* being then no wa
ſatisfied for the debt and damages aforeſaid
whereof the ſaid *J.* at and before the tim
of making the ſaid writing, had notice,
wit, at *London* aforeſaid in the pariſh a
ward aforeſaid. *And* the ſaid *T.* being
as aforeſaid warden of the ſaid priſon, th
ſaid Sir *A. H.* knt. before the making th
ſaid writing obligatory, to wit, on the 12
day of *April* in the term of *Eaſter* in the 7
year of the reign of the ſaid king, came in
the court of the ſaid late king, before S
G. T. knt. and his companions, juſtices
the ſaid king of the bench at *Weſtminſte*
by *H. C.* then his attorney, and then exh
bited to the ſaid juſtices his certain bill again
the ſaid *T. F.* warden of the priſon of th
ſa

Bill filed againſt the warden for the eſcape, ſetting forth.

ſaid late king, of the *Fleet*, then preſent in the ſame court in his proper perſon, of a plea of debt; by which ſaid bill the ſaid Sir *A.* then complained that the ſaid *T.* unjuſtly detained, and did not render to the ſaid Sir *A.* 1000 *l.* 46 *s.* which he owed him, for that, to wit, that *whereas* the ſaid Sir *A.* heretofore, to wit, in the term of *Eaſter* in the 5th year of the reign of the ſaid late king and the lady *Mary* the late queen, in the court of the ſaid late king and queen, before the ſaid late king and queen, the ſaid court being then at *Weſtminſter* in the county of *M.* by bill without the writ of the ſaid late king and queen, and by the judgment of the ſame court, had recovered againſt the ſaid *F. H.* gent. as well a certain debt of 1000 *l.* as 46 *s.* which in the ſame court were adjudged to the ſaid Sir *A.* for his damages which he had ſuſtained as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *F.* was convicted. *And* the ſaid *F. H.* afterwards, to wit, on *Monday* next after the morrow of the aſcenſion of our Lord in the 6th year of the reign of the ſaid late king and queen, then being preſent in his proper perſon in the ſaid court of the ſaid late king and queen, before the ſaid late king and queen at *Weſtminſter* in the county of *M.* aforeſaid, at the prayer of the ſaid Sir *A.* was committed by the ſaid court of the ſaid late king and queen, before the ſaid late king and queen there, to the cuſtody of the marſhal of the *Marſhalſea*

The judgment obtained againſt the priſoner in B. R.

His being committed in execution there;

Marſhalſea of the ſaid late king and queen, before the ſaid late king and queen, in execution for the debt and damages aforeſaid, at the ſuit of the ſaid Sir *A.* there to remain until, *&c.* as by the record and proceedings as well of the ſaid judgment as of the ſaid commitment in execution, remaining in the ſaid court of the ſaid late king, before the ſaid late king at *Weſtminſter* aforeſaid, more fully appeared. By virtue of which ſaid commitment the ſaid marſhal of the ſaid *Marſhalſea* then and there received the ſaid *F.* into his cuſtody, and had and detained him in execution for the ſaid debt and damages.

removed by Habeas Corpus;

And the ſaid *F.* being ſo in the cuſtody of the marſhal of the ſaid *Marſhalſea*, in execution for the ſaid debt and damages in form aforeſaid, afterwards, *to wit*, on the 24th day of *May* in the 6th year aforeſaid, the ſaid *F.* came in his proper perſon, being brought under the cuſtody of the ſaid marſhal of the *Marſhalſea* aforeſaid, by virtue of the writ of the ſaid late king and queen of *Habeas Corpus* of the ſaid *Francis*, directed to the ſaid marſhal, iſſuing out of the court of the ſaid late king and queen of the bench at *Weſtminſter* aforeſaid, before Sir *J. P.* knt. then one of the juſtices of the ſaid late king and queen of the bench, at his chamber ſituated in *Serjeants-inn* in *Chancery-lane*, *London*; and the ſaid marſhal, *to wit*, *W. B.* eſq; then and there returned to the ſaid juſtice (amongſt other things) that the ſaid *F. H.* was charged in execution at the ſuit of the ſaid Sir *A.* for the ſaid 1000*l.* of debt, and 46*s.* for damages

images ſo as aforeſaid recovered, the body of which ſaid *F.* he then and there had ready, according to the tenor of the ſaid writ: *Whereupon* the ſaid *F. H.* then and there was committed by the ſaid juſtice to the priſon of the ſaid king and queen of the *Fleet* in execution for the ſaid debt and damages, (amongſt other things) there to remain until, *&c.* which ſaid commitment the ſaid juſtice afterwards, *to wit*, on the 8th day of *June* in the term of the holy *Trinity* in the 6th year aforeſaid, by his own proper hands delivered unto the ſaid court of the bench aforeſaid, to be inrolled of record, and the ſame commitment was inrolled of record in the ſame court, as by the record of the ſaid writ and the return thereof, and the commitment in execution laſt mentioned, remaining in the ſame court of the bench aforeſaid, *to wit*, at *Weſtminſter* aforeſaid, then more fully and plainly appeared; by virtue of which ſaid commitment the ſaid *T. F.* being warden of the ſaid priſon of the *Fleet*, on the ſaid 24th day of *May* in the 6th year aforeſaid, then and there, *to wit*, before the ſaid juſtice at his chambers aforeſaid ſituate in *Serjeants-Inn* aforeſaid, took the ſaid *F. H.* into his cuſtody, and immediately led and put the ſaid *F. H.* unto and in the ſaid priſon of the *Fleet*, then being at *London*, *to wit*, in the pariſh of *St. Bridget*, otherwiſe *St. Brides*, in the ward of *Farringdon without*, and then and there had and detained the ſaid *F.* in the ſaid priſon in execution for the debt and damages aforeſaid:

committed to the cuſtody of the warden,

and permitted to eſcape.

And the ſaid *F.* being ſo, as aforeſaid, in the cuſtody of the ſaid *T.* in execution for the ſaid debt and damages in form aforeſaid, the ſaid *T.* afterwards, *to wit*, on the 1ſt day of *April* in the 7th year of the reign of our ſaid late lord king *William* the third, then being warden of the ſaid priſon of the ſaid lord the king as aforeſaid, had permitted the ſaid *F.* to go at large freely and voluntarily where he would, and to eſcape out of the ſaid priſon and out of his cuſtody, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid Sir *A.* being then no way ſatisfied for the ſaid debt and damages, or any parcel thereof; *whereby* an action had accrued to the ſaid Sir *A.* to demand and have of the ſaid *T.* the ſaid 1002*l.* 6*s.* *Yet* the ſaid *T.* although he had been often requeſted, had not then rendered the ſaid 1002*l.* 6*s.* to the ſaid Sir *A.* but had then intirely refuſed and then refuſed to render the ſame to him; wherefore the ſaid Sir *A.* then ſaid he had been injured and had damage to the value of 500*l.* and thereupon he then prayed remedy, *&c.* with this that he the ſaid Sir *A.* would then verify that the ſaid judgment then remained in its full force and ſtrength, no ways revoked, reverſed, annulled, vacated or ſatisfied, *&c.* and he then found pledges for proſecuting, *to wit*, *John Doe* and *Richard Roe*: *Upon* which ſaid bill firſt mentioned in the ſaid court of the ſaid late king before the ſaid juſtices of the ſaid late king of the bench at *Weſtminſter*, ſuch proceedings were then afterwards, *to wit*, in

Judgment againſt the warden.

in that ſame term of *Eaſter* in the ſaid 7th year of the reign of the ſaid late king, that the ſaid Sir *A. H.* by the conſideration of the ſame court, recovered againſt the ſaid *T. F.* the ſaid debt of 1002*l.* 6*s.* and his damages by occaſion of the detaining the debt to 80*s.* adjudged by the ſaid court of the ſaid late king to the ſaid Sir *A.* and that the ſaid *T.* ſhould be in mercy, *&c.* *And* the ſaid Sir *A.* further ſaith, that after the ſaid judgment in form aforeſaid given, and after the making the ſaid writing obligatory, *to wit*, on the 24th day of *May* in the ſaid 7th year of the reign of the ſaid late king, the ſaid *T. F.* by the advice and at the requeſt of the ſaid *J. T.* for the reverſing the ſaid judgment, ſued forth out of the chancery of the ſaid late king, the ſame court being then here at *Weſtminſter* in the county of *Middleſex*, a certain writ of the ſaid late king for correcting errors in the ſaid record and proceedings, and in giving the ſaid judgment, directed to Sir *G. T.* knt. then chief juſtice of the ſaid late king of the bench, by which ſaid writ the ſaid late king commanded his ſaid chief juſtice, that if judgment was given thereupon, that then he ſhould ſend to the ſaid late king diſtinctly and plainly under his ſeal the record and proceſs of the ſaid plaint, with all things touching the ſame, and the ſaid writ, ſo that the ſaid late king might have them from the day of the holy *Trinity* in three weeks then next enſuing, whereſoever he ſhould then be in *England*, that inſpecting the record and proceſs aforeſaid, he

Removed by writ of error.

might cauſe further to be done thereupon for amending the ſaid errors, as of right and according to the law and cuſtom of his kingdom of *England* ſhould be meet to be done; by virtue of which ſaid writ for correcting errors, afterwards, at the ſaid day of the return of the ſaid writ, the ſaid record and proceſs of the ſaid plaint, with all things touching the ſame, were in due manner ſent and removed into the court of the ſaid late king before the ſaid late king, the ſaid court then being at *Weſtminſter* in the county of *Middleſex* aforeſaid: *Upon which* ſuch proceſs was upon the ſaid writ for correcting errors in the ſaid court of the ſaid late king before the ſaid late king, that afterwards, *to wit*, in the term of *Eaſter* in the 8th year of the reign of the ſaid late king, it was conſidered by the ſaid court of the ſaid late king before the ſaid late king, that the ſaid judgment ſhould ſtand in its full ſtrength and effect, that the ſaid judgment ſhould be in all things affirmed, as by the record and proceſs of the ſaid judgment remaining in the court of our ſaid lady the preſent queen before the queen herſelf at *Weſtminſter* more fully appeareth; which ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid Sir *A.* further ſaith, that the ſaid *T.* in his life-time, *to wit*, within the ſpace of two years next after the date of the ſaid writing obligatory, and ſoon after the making the ſame, *to wit*, on the 21ſt day of *May* in the year of our Lord 1695. aforeſaid, at *London* aforeſaid, to

Affirmed in B. R.

Notice thereof to the deft.

to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap* aforesaid, gave notice to the said *J. T.* of the said action so as aforesaid prosecuted by the said Sir *A. H.* against the said *T.* and requested the said *J.* to indemnify the said *T.* therefrom; *Yet* the said *J. T.* within the space of two years next ensuing the date of the said writing obligatory, or at any time afterwards in the life-time of the said *T.* did not indemnify or save harmless the said *T. F.* from the said action so as aforesaid prosecuted by the said Sir *A. H.* knt. against the said *T.* And this he is ready to verify: Wherefore he prayeth judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, *&c.*

who did not save the warden harmless.

L. Agar.
Tho. Pengelly.

Be it remembered, that on the 23d day of *January* in this same term, *C. P.* by *J. B.* his attorney, came here into court and exhibited his certain bill against *T. F.* esq; warden of the prison of our lord the present king of the *Fleet*, present here in court in his proper person, of a plea of debt, the tenor of which said bill follows in these words: *To* the justices of our lord the king of the bench, *Middlesex*, *to wit*, *C. P.* by *J. B.* his attorney complaineth of *T. F.* esq; warden of the prison of our lord the king of the *Fleet*, present here in court in his proper person, for that, that he has not rendered to the said *C.* 151 *l.* 3 *s.* of lawful money which he

Memorandum of a bill in C. B.

Bill in debt against the warden of the Fleet *for the escape of a prisoner in execution.*

he oweth him, and unjuſtly detaineth, for that, *to wit*, that *whereas* the ſaid *C.* heretofore, *to wit*, in the term of *Eaſter* in the 4th year of the reign of our lord the now king and lady *Mary* late queen of *England*, in the court of our ſaid lord the king and lady the late queen, before the ſaid king and late queen, the ſaid court then being at *Weſtminſter* in the county of *Middleſex*, by the judgment of the ſaid court recovered againſt *M. G.* otherwiſe called *M. G.* of *London*, gent. 150 *l.* of debt, and alſo 23 *s.* for his damages which he ſuſtained, as well by occaſion of the detaining that debt as for his coſt and charges by him about his ſuit in that behalf expended, whereof the ſaid *M.* was convicted, as by the record thereof now remaining in the court of our ſaid lord the preſent king before the king himſelf at *Weſtminſter* aforeſaid more fully appears; which ſaid debt and damages in the whole amount to the ſaid 151 *l.* 3 *s.* *And* afterwards, *to wit*, on *Monday* next after the octave of the purification of the bleſſed *Mary* in the term of *Hilary* in the 4th and 5th years of the reign of our ſaid lord the king and lady the late queen, in the ſaid court of our ſaid lord the king and lady the late queen before the ſaid king and late queen at *Weſtminſter* aforeſaid, the ſaid *C.* came in his proper perſon, and the ſaid *M.* then preſent in the ſame court, and being then in the ſaid court, at the prayer of the ſaid *C.* was in due manner committed by the court to *W. B.* eſq; then marſhal of the *Marſhalſea* of our ſaid lord the king and lady the late queen, before our ſaid

Judgment in debt againſt the priſoner at B. R.

The priſoner committed in execution;

ſaid lord the king and lady the late queen at *Weſtminſter*, in execution, at the ſuit of the ſaid *C.* for the debt and damages aforeſaid, there to remain until, *&c.* as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king before the king himſelf at *Weſtminſter* more fully appeareth; by virtue of which ſaid commitment the ſaid *W. B.* then and ſtill marſhal of the *Marſhalſea* aforeſaid, took the ſaid *M.* into his cuſtody in execution for the ſaid debt and damages, and had detained and kept the ſaid *M.* in execution for the debt and damages aforeſaid: *And* the ſaid *M.* being as aforeſaid in the cuſtody of the marſhal of the *Marſhalſea* aforeſaid, in execution for the ſaid debt and damages, afterwards, *to wit*, on the 7th day of *July* in the 5th year of the reign of our ſaid lord the king and lady the late queen, the ſaid *M.* being ſo as aforeſaid in execution for the ſaid debt and damages, by virtue of the writ of our ſaid lord the king and lady the late queen of *Habeas corpus cum cauſa*, in due manner iſſuing out of the court of our ſaid lord the king and lady the late queen of the bench here, and directed to the ſaid marſhal of the *Marſhalſea* of our ſaid lord the king and lady the late queen, before the ſaid lord the king and lady the late queen was brought and had with the ſaid cauſe aforeſaid, by the marſhal of the *Marſhalſea* aforeſaid, charged in execution with the cauſe aforeſaid, before *J. P.* then being one of the juſtices of our lord the king and lady the late queen of the bench here,

removed by Habeas Corpus;

here, at the parish of *St. Clement Danes*: *And* thereupon the said *M.* then and there, *to wit*, on the said 7th day of *July* in the 5th year aforesaid, at the said parish of *St. Clement Danes* aforesaid, was in due manner committed by the said *J. P.* then one of the justices of our said lord the king and lady the late queen of the bench here as aforesaid, to the custody of the said *T. F.* then and yet warden of the prison of the *Fleet* aforesaid, charged in execution for the debt and damages aforesaid, as by the record and proceedings thereupon remaining in the said court of the bench here more fully appeareth; by virtue of which said commitment the said *T. F.* then being warden of the said prison of the *Fleet*, then and there had and detained the said *M.* in his custody, in execution for the debt and damages aforesaid; *The* said *T. F.* then and still being warden of the said prison of the *Fleet*, afterwards, *to wit*, on the 23d day of *November* in the 6th year of the reign of our said lord the king and lady the late queen, at the said parish of *St. Clement Danes*, well knowing the premises, no ways regarding the duty of his office, but contriving and fraudulently intending to cause the said debt and damages to be wholly lost, against the will and without the licence and notice of the said *C.* the said *C.* being no ways satisfied for the said debt and damages, or any parcel thereof, then and there permitted the said *M.* to go at large where he would, and to escape out of the custody of the said *T. F.* then and yet being

committed to the custody of the defendant,

who permitted him to escape.

being warden of the ſaid priſon of the *Fleet*, and out of the ſaid execution; whereby an action accrued to the ſaid *C.* to demand and have of the ſaid *T. F.* the ſaid 151 *l.* 3 *s.* *Yet* the ſaid *T. F.* hath not yet rendered the ſaid 151 *l.* 3 *s.* to the ſaid *C.* but hath intirely refuſed to render the ſame to him. Wherefore he ſaith he is injured, and has damage to the value of 20 *l.* And thereupon he prayeth remedy, *&c.* Pledges for proſecuting *J. D.* and *R. R.* Actio accrevit.

And the ſaid *T. F.* in his proper perſon cometh and defendeth the force and injury when, *&c.* And ſaith, that the ſaid declaration, and the matter therein contained, are not ſufficient in law for the ſaid *T.* to have and maintain his ſaid declaration againſt the ſaid *T.* And that he the ſaid *T.* hath no need, and is not bound by the law of the land in any manner to anſwer to the ſaid declaration made in manner and form aforeſaid; and this he is ready to verify: Wherefore for default of a ſufficient declaration, the ſaid *T.* prayeth judgment, and that the ſaid *C.* may be barred from having his action thereupon againſt the ſaid *T.* *Demurrer to the bill.* Salk. 753.

And the ſaid *C.* for that he hath in his ſaid declaration above declared ſufficient matter in law, to have and maintain his ſaid action againſt the ſaid *T.* which he is ready to verify; which ſaid matter the ſaid *T.* doth not deny, nor any ways anſwer thereto, but intirely refuſeth to admit the verifying the ſame, as before, prayeth judgment, and his ſaid debt, together with his damages, by occaſion *Joinder.*

occaſion of the detaining that debt, to be adjudged to him, *&c.* *And* becauſe the juſtices here would adviſe themſelves of and upon the premiſes, before they give their judgment thereupon, day is given unto the ſaid parties here, until *Wedneſday* next after 15 days of *Eaſter*, to hear their judgment thereupon, for that the ſaid juſtices here are not yet, *&c.* *At which day* here came as well the ſaid *C.* by his attorney aforeſaid, as the ſaid *T.* in his proper perſon, and hereupon the premiſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſaid juſtices here, that the declaration and matter therein contained are ſufficient in law for the ſaid *C.* to have and maintain his ſaid action againſt the ſaid *T.* as the ſaid *C.* hath above alledged. *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *T.* his ſaid debt, and his damages by occaſion of the detaining that debt, to 100*l.* adjudged by the court here to the ſaid *C.* by his aſſent. And the ſaid *T.* in mercy, *&c.*

Continuance by Cur' adviſar'.

Judgment for the plaintiff.

Suggeſtion after final judgment in debt on a bond, that the bond was upon condition for performance of covenants purſuant to the ſtat. 8 & 9 W. 3. c. Scaccario. *The condition of the bond for*

And now at this day, to wit, on the 15th day of *June* in *Trinity* term in the 24th year of the reign of our ſaid ſovereign lord *George* the ſecond, come the ſaid bailiffs and citizens of the ſaid city of *Litchfield* by the ſaid *R. M.* their attorney, and ſay, that the ſaid writing obligatory in the ſaid bill of the ſaid bailiffs and citizens exhibited againſt the ſaid *Edward Tart*, was under this condition, That if one *Thomas Tart*, his executors, adminiſtrators or aſſigns did well

well and truly obſerve, perform, fulfil, accompliſh, pay, and keep all and ſingular the covenants, grants, articles, clauſes, proviſoes, payments, conditions and agreements whatſoever, which on the part and behalf of the ſaid *T. T.* his heirs, executors, adminiſtrators or aſſigns were or ought to be obſerved, performed, fulfilled, accompliſhed, paid and kept, compriſed or mentioned in one indenture of leaſe bearing date with the ſaid writing obligatory, and made or expreſſed to be made between *Luke Robinſon*, gent. and *Edward Holmes*, gent. bailiffs of the ſaid city of *Litchfield*, and their brethren the citizens of the ſaid city of the one part, and the ſaid *T. T.* of the other part, in all things according to the true intent and meaning of the ſame; then the ſaid writing obligatory was to be void and of none effect, or elſe ſhould be and remain in full force, power and virtue. And that the ſaid indenture in the ſaid condition mentioned was made on the ſaid 18th day of *March* in the year of our Lord 1736. between the ſaid *Luke Robinſon* and *Edward Holmes* then bailiffs of the ſaid city of *L.* and their brethren the citizens of the ſaid city of the one part, and the ſaid *T. T.* in the ſaid condition mentioned by the name of *T. T.* of *B.* in the county of *W.* tiremaker of the other part; which other part of the ſaid indenture ſealed with the ſeal of the ſaid *T. T.* the ſaid bailiffs and citizens of the ſaid city of *L.* bring here into court, the date whereof is the ſame day and year laſt mentioned, whereby the ſaid *L. R.* and *E. H.* the

performance of covenants in an indenture.

The indenture.

Profert of the indenture.

the ſaid bailiffs and their brethren the citizens of the ſaid city, for and in conſideration of the rents, covenants and agreements therein after mentioned, expreſſed and reſerved, and on the part and behalf of the ſaid *T. T.* his executors, adminiſtrators and aſſigns to be paid, done and performed, did with one aſſent, conſent and agreement for them and their ſucceſſors, bailiffs and citizens of the ſaid city, demiſe, leaſe, ſet and to farm let unto the ſaid *T. T.* his executors, adminiſtrators and aſſigns, all thoſe their water corn-mills ſet, ſituate, ſtanding and being in or near *Stowe-ſtreet* in the ſaid city of *L.* called *Stowe-mills*, and all houſes, buildings, ways, waters, pools, ponds, dams and floodgates to the ſaid mills, or any of them belonging, with all and every of their appurtenances, and all, and all manner of going and running-geer belonging to and uſed with the ſaid mills; and alſo all and all manner of goods and chattels, utenſils, implements and tools whatſoever of them the ſaid bailiffs and citizens then ſtanding, remaining or being in, at, or belonging to the ſaid mills, and which the then tenants of were obliged to leave there; and that little piece of building then lately uſed as a walk-mill, but then demoliſhed and plucked down, with the land whereon the ſaid building ſtood. And alſo all that the piſcary or fiſhing in the *Nether-pool*, otherwiſe called *Stowe's-pool*, adjoining to the ſaid mill; and all that the ſaid pool called *Nether-pool* or *Stowe-pool*, as the ſame was then meared, bounded and ſta-

ked

ked out, with liberty alſo of landing the nets on the waſte lands belonging to the ſaid bailiffs and citizens gained out of the ſaid pool, which were not then in leaſe to any other perſons, and all privileges and advantages to and with the ſaid pool, piſcary, and fiſhing uſually enjoyed, and all houſes, outhouſes, edifices, buildings, ways, waters, watercourſes, pools, ponds, dams, ſtreams, floodgates, eaſements, commons, profits, commodities, advantages, hereditaments and appurtenances whatſoever to the premiſes aforeſaid belonging or in any wiſe appertaining, or accepted, reputed, deemed, taken or known as part, parcel, or member thereof, with free liberty alſo to and for the ſaid *T. T.* his executors, adminiſtrators and aſſigns to pull down the ſaid mill, and to apply the materials thereof, utenſils and geering thereto belonging, as he or they ſhould think proper; he or they erecting or building in the ſame place another good and ſubſtantial mill with fit and proper wheels and appurtenances as therein after mentioned. Except and always reſerved out of that demiſe unto the ſaid bailiffs and citizens, their ſucceſſors and aſſigns, all ſuch waſte grounds or lands gained out of the ſaid pool as was not ſtaked and ſet out as aforeſaid. *To have* and to hold the ſaid mills, pools, fiſhery and premiſes thereby demiſed, or ſo intended to be (except before excepted) with their and every of their appurtenances unto the ſaid *T. T.* his executors, adminiſtrators and aſſigns from the 24th day of *June* next enſuing the date of the

Habendum.

the ſaid indenture, for and during and unto the full end and term of 31 years from thenceforth next enſuing, fully to be com-

Reddendum. plete and ended; *Yielding* and paying therefore yearly and every year, during the firſt ſix years of the ſaid demiſed term, unto the ſaid bailiffs and citizens, their ſucceſſors and aſſigns, the rent or ſum of 5 *l.* of lawful money of *Great Britain*, upon two of the moſt uſual feaſt-days or days of payment in the year, by even and equal portions without any deduction or abatement whatſoever (except only for the land-tax); and alſo yielding and paying yearly and every year into the ſaid bailiffs and citizens, their ſucceſſors and aſſigns, during the laſt 25 years of the ſaid demiſed term, the rent or ſum of 30 *l.* of like lawful money upon the ſame feaſt-days and times of payment, without any deduction or abatement whatſoever (except only for the land-tax, which the ſaid bailiffs and citi-

Covenants. zens were to pay and diſcharge.) *And* the ſaid *T. T.* for himſelf, his executors, adminiſtrators and aſſigns, and every of them, did covenant, promiſe and grant to and with the ſaid bailiffs and citizens and their ſucceſſors and aſſigns by the ſaid indenture, that he the ſaid *T. T.* his executors, adminiſtrators, or aſſigns, or ſome of them, ſhould and would yearly and every year during the ſaid demiſed term, well and truly pay, or cauſe to be paid, unto the ſaid bailiffs and citizens, their ſucceſſors and aſſigns, the ſaid yearly reſerved rents of five pounds, and thirty pounds of lawful money of *Great Britain*, upon the reſpective days

and

and times, and in manner and form above limited and appointed for payment thereof, without any deduction, defalcation or abatement whatſoever (except only for the land-tax); *And* alſo that he the ſaid *T. T.* his executors, adminiſtrators, or aſſigns ſhould and would, within the ſpace of ſix years from the day of the date of the ſaid indenture, erect and build, or cauſe to be erected and built, a good ſet of mills at and upon the ſame place where the ſaid demiſed mills then ſtood, and ſhould and would expend and lay out in building the ſame the ſum of 350 *l.* and ſhould and would make ſuch mills good, firm and ſubſtantial, with proper wheels, gates, utenſils and other appurtenances fit for carrying on ſome ſort of iron manufactory, and ſhould and would during the ſaid term repair, uphold, maintain and keep not only the ſaid mills ſo to be erected and built, but alſo the floodgates, waſtes, bridges and dams belonging to the ſaid mills and pool, with all needful and neceſſary reparations, as by the ſaid indenture amongſt other things more fully appears. *And* the ſaid bailiffs and citizens of the city of *L.* in fact ſay, that before the feaſt of the nativity of our Lord in the year of our Lord 1749. the ſaid *T. T.* died, that is to ſay, at *London*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, and that at the ſaid feaſt of the nativity of our Lord in that year the ſum of 135 *l.* of the rent of 30 *l.* aforeſaid, for four years and an half ending at that feaſt in that year, were in arrear from the executors of the laſt will and *1ſt Breach.*

and teſtament of the ſaid *T. T.* to the ſaid bailiffs and citizens of the ſaid city of *L.* to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and the ſame ſtill remains due and unpaid, contrary to the form and effect of the ſaid covenant of the ſaid *T. T.* ſo made in that reſpect. *And* the ſaid bailiffs and citizens of the ſaid city of *L.* further ſay, that although the ſaid *T. T.* in the ſaid indenture mentioned, within ſix years next after the making of the ſaid indenture, did erect and build a ſet of mills at or upon the ſame place where the ſaid demiſed mills at the time of the making the ſaid demiſe ſtood; yet the ſaid *T. T.* did not cauſe the ſame to be well built, neither did the ſaid *T. T.* expend or lay out in building the ſame the ſum of 350 *l.* nor any ſum of money exceeding the ſum of 100 *l.* nor were the ſame ſet of mills made good, firm and ſubſtantial, with wheels, gates, utenſils, and other appurtenances fit for carrying on any ſort of iron manufactory; nor did the ſaid *T. T.* in his life-time, or any other perſon whatſoever, for the ſpace of ſix years now laſt paſt, repair, uphold, maintain or keep the ſaid new erected mills, or any of them, or any of the floodgates, waſtes, bridges, and dams belonging thereto, and pool, or any of them, but on the contrary thereof permitted and ſuffered the ſaid mills, and the ſaid floodgates, waſtes, bridges, and dams to be broken down, ruinous and in great decay for want of needful and neceſſary reparations, and the ſame ſtill remain broken down,

2d Breach.

down, ruinous and in great decay, that is to ſay, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap* aforeſaid; and this the ſaid bailiffs and citiſens of the city of *L.* are ready to verify; and pray judgment, and their damages by reaſon of the ſaid breaches of covenant, to be adjudged to them. *Therefore* it is conſidered by the barons here, that the ſaid bailiffs and citiſens ought to recover their damages on occaſion of the premiſes, againſt the ſaid *E. T.* But becauſe it is unknown what damages the ſaid bailiffs and citiſens have ſuſtained by reaſon of the ſaid breaches of covenant; Therefore according to the form of the ſtatute in ſuch caſe lately made and provided, the ſheriffs of *London* are commanded that they cauſe to come before Sir *Thomas Parker*, knt. chief baron of the exchequer of our lord the king, on next after at *Guild-hall* in the city of *London*, twelve free and lawful men of their bailiwic, to inquire of the truth of the premiſes by the ſaid bailiffs and citiſens above ſuggeſted; and to aſſeſs what damages the ſaid bailiffs and citiſens have ſuſtained by reaſon of the breaches of covenant aforeſaid; and that they ſhould have on that day before the ſaid chief baron the writ of the ſaid lord the king, to them directed for that purpoſe. *It is likewiſe* commanded to the ſaid chief baron, that he certify the inquiſition before him taken to the barons of the exchequer at *Weſtminſter*, from the day of St. *Michael* in three weeks next coming, together with that writ. And the

Judgment.

Writ of Inquiry *awarded.*

ſame day is given to the ſaid bailiffs and citizens here, *&c.*

Demurrer.

Demurrer to a conuſance in replevin. C. B.

AND the ſaid *J. L.* ſaith, that the conuſance of the ſaid *J. C.* of the taking of the cattle, goods and chattels aforeſaid of him the ſaid *J. L.* in the ſaid place in which, *&c.* as bailiff of the ſaid *T. D.* and the matter therein contained, are inſufficient in law to maintain him the ſaid *J. C.* to acknowledge the taking of the ſaid cattle, goods and chattels in the ſaid place in which, *&c.* to be juſt, and that he the ſaid *J. L.* needeth not, neither by the law of the land is he bound to anſwer to the ſaid conuſance in manner and form aforeſaid made and pleaded; and this he is ready to verify: Wherefore for default of a ſufficient conuſance in this behalf, he the ſaid *J. L.* prayeth judgment, and his damages, by means of the taking and unjuſt detention of the ſaid cattle, goods and chattels, to be adjudged unto him, *&c.* And for cauſes of demurrer in law upon the ſaid conuſance, he the ſaid *J. L.* according to the form of the ſtatute in ſuch caſe lately made and provided, ſheweth to the court here the following cauſes, to wit, that the ſaid *J. C.* in and by his ſaid conuſance hath not averred or ſhewn, that the ſaid yearly rent of 4 *l.* or any part thereof, was due and in arrear at the time in which the ſaid cattle, goods and chattels were

Cauſes of demurrer.

were ſo taken as aforeſaid; and for that the ſaid *J. C.* in and by his ſaid conuſance hath not averred or ſhewn that *E. J.* in the ſaid conuſance named, is dead; and for that the ſaid conuſance is uncertain and wanteth form, *&c.*

J. Belfield.

Demurrer to evidence at Niſi prius.

And the jurors of the jury, whereof mention is within made, being demanded, alſo came, who to ſpeak the truth of the within contained were choſen, tried and ſworn; upon which the ſaid *A.* by one *L. P.* ſerjeant at law, then of the council of the ſaid *A.* in maintenance of the iſſue within joined, before the ſaid juſtices of aſſize ſhewed in evidence to the ſaid jurors, and ſaid that, *&c.*

And the ſaid *S.* by one *R. B.* then of his council, ſaith, that the evidence and allegations aforeſaid, above alledged on the behalf of the ſaid *A.* are not ſufficient in law to maintain the ſaid iſſue, to which he hath no need, nor is he bound by the law of the land to anſwer. Wherefore for default of ſufficient evidence in this behalf, he prayeth that the ſaid jurors may be diſcharged from giving their verdict in the premiſes; and that the ſaid *A.* may be precluded from having his ſaid action againſt him the ſaid *S. &c.*

Joinder in demurrer.

And the ſaid *A.* for that he hath ſhewn ſufficient matter in maintenance of the ſaid iſſue in evidence to the ſaid jurors, which matter the ſaid *S.* doth not deny, nor in any manner anſwer thereto, prayeth judg-

ment, and that the ſaid jurors thereof may be diſcharged; and that the ſaid *S.* may be convicted of the premiſes, *&c. Whereupon* the ſaid jurors by the court here are diſcharged of the premiſes. *And* day is thereupon given to the ſaid parties before the juſtices within written at *Weſtminſter*, from the day of St. *Michael* in three weeks within written, to hear their judgment thereupon, *&c.*

Jurors diſcharged.

Day in C. B. *given.*

And the ſaid *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury when, *&c.* and craveth oyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, to wit, *George* II. *&c.* Witneſs, *&c.* Which being read and heard, the ſaid *R.* prayeth judgment of the writ and declaration of him the ſaid *W. O. B.* aforeſaid; becauſe he ſaith, that the ſaid writ and declaration thereupon aforeſaid in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* his action aforeſaid againſt him the ſaid *R.* to have and maintain, to which ſaid writ and declaration in manner and form aforeſaid made and declared, he hath no need, nor by the law of the realm is held or obliged in any manner to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, *&c. And* for cauſes of demurrer in law in this behalf, he the ſaid *R.* according

Demurrer to writ and declaration.

Oyer of the writ of privilege.

Cauſes of demurrer.

ding to the form of the ſtatutes in ſuch like caſes made and provided, ſheweth to the court theſe following, that is to ſay, for this, that it appeareth to the court that the ſame writ of our ſaid lord the king of privilege was had and ſued out upon the ſaid 3d day of *July* in the 8th year of the reign of our ſaid lord the king; which day of ſuing out thereof was before the day on which the ſaid *W.* has in his ſaid declaration thereupon alledged and declared, that the treſpaſſes, aſſaults, batteries, woundings and impriſonments, charged upon him the ſaid *R.* in and by the ſaid declaration, were done and committed; and alſo for this, that between the ſaid writ and declaration are diverſe variances; and alſo for this, that the ſaid declaration in form aforeſaid made and declared, is in itſelf repugnant, inſenſible, contradictory, and wanteth form, *&c.* *And* hereupon the ſaid *R. D.* demandeth the aforeſaid *W. O. B.* to join in demurrer with him the ſaid *R.* And hereupon a day is given by the court of our ſaid lord the king of the bench here to the ſaid *W.* before his majeſty's juſtices at *Weſtminſter*, until —— next after —— to join in the ſaid demurrer in law with the ſaid *R.* And the ſaid *W.* at the ſame day being ſolemnly required came not, neither is his writ of our ſaid lord the king of privilege aforeſaid againſt the ſaid *R.* further proſecuted, but made default. *Therefore* it is conſidered, that the ſaid *W.* take nothing by his ſaid writ, but that he and his pledges to proſecute, to wit, *J. D.* and

Writ teſted before the cauſe of action laid in the declaration.

Judgment for the defendant for default of the plaintiff's joining in demurrer.

R. R. be thereof in mercy; and that the ſaid *R.* do go thereof without day, *&c.* And further it is conſidered by the court here, that the ſaid *R.* recover againſt the ſaid *W.* 3*l.* 16*s.* 8*d.* for his expences and coſts by him about his defence in this part ſuſtained, to the ſaid *R.* by the court here, according to the form of the ſtatute in ſuch caſe lately made and provided, adjudged, *&c.* And that the ſaid *R.* have his execution for the ſame, *&c.*

Demurrer to a plea of Nil debet *to a declaration of debt on a bail-bond.*

And the ſaid *E. H.* ſaith, that the ſaid plea of him the ſaid *T. S.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *T.* and that he the ſaid *E.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid plea of him the ſaid *T.* in manner and form aboveſaid above pleaded; and this he is ready to verify: Wherefore for want of a ſufficient plea in this behalf, the ſaid *E.* prayeth judgment, and that his ſaid debt, together with his damages by reaſon of the detaining of the debt, may be adjudged to him, *&c.* *And* for cauſes of demurring in law in this behalf, the ſaid *E. H.* according to the form of the ſtatute in ſuch caſes made and provided, ſheweth to the court here theſe cauſes following, (that is to ſay) For this, that the ſaid *T. S.* hath not by his ſaid plea particularly denied nor confeſſed the ſaid deed in the ſaid declaration alledged; and alſo for this, that the ſaid *T.* is eſtopped by the ſaid deed to

ſay

ſay that he doth not owe the money in the ſaid deed mentioned; and ought to have ſhewn by his plea, how he is diſcharged from the ſame.

And the ſaid *T. S.* ſaith, that the ſaid plea by him the ſaid *T.* in manner and form aforeſaid pleaded, and the matter therein contained, are good and ſufficient in the law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *T.* which ſaid plea, and the matter therein contained, he the ſaid *T.* is ready to verify; and becauſe the ſaid *E.* to the ſaid plea hath not anſwered, nor the ſame hitherto in any manner gainſaid, he the ſaid *T.* doth pray judgment, and that he the ſaid *E.* may be barred from having againſt him the ſaid *T.* his action aforeſaid, *&c.* *Joinder.*

Ejectment.

YORKSHIRE, *to wit*, *A. B.* late of, *&c.* was attached to anſwer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, *&c.* in the pariſh of *S.* in the county aforeſaid, which *E. F.* demiſed to the ſaid *C.* for a term of years which is not yet expired, and into 500 other acres, *&c.* in the pariſh of *S.* aforeſaid in the county aforeſaid, which *G. H.* demiſed to the ſaid *C.* for a term of years which is not yet expired, and ejected him from his ſaid ſeveral farms, and other wrongs to him did, to the great damage of the ſaid *C.* and againſt the peace of our lord the now king, *&c.* *Declaration in treſpaſs and ejectment on a double demiſe.* C. B.

&c. and whereupon the ſaid *C.* by *W. R.* his attorney complaineth, *That whereas* the ſaid *E.* on the ——— day ——— of in the ——— year of the reign of the ſaid lord the king at the caſtle of *Y.* aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid firſt above mentioned, with the appurtenances, to have and to hold the ſame tenements firſt above-mentioned, with the appurtenances, to the ſaid *C.* and his aſſigns, from the ——— day of ——— then laſt paſt to the full end and term of ——— years from thence next following, and fully to be complete and ended. *And whereas* alſo the ſaid *G.* on the ſame ——— day of ——— in the ſaid ——— year of the reign of the ſaid lord the king, at the caſtle of *Y.* aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid laſt above-mentioned, with the appurtenances, to have and to hold the ſame tenements laſt above-mentioned, with the appurtenances, to the ſaid *C.* and his aſſigns, from the ſaid ——— day of ——— then laſt paſt, to the full end and term of ——— from thence next following, and fully to be complete and ended. *By virtue* of which ſaid ſeveral demiſes, the ſaid *C.* entered into the ſeveral tenements aforeſaid, with the appurtenances, and was poſſeſſed thereof. *And* the ſaid *C.* being ſo poſſeſſed thereof, the ſaid *W.* afterwards, that is to ſay, on the ——— day of ——— in the ——— year of the reign of the ſaid lord the king, with force and arms, that is to ſay, with ſwords, ſtaves and knives, entered into the ſaid ſeveral tenements above ſpecified,

Firſt demiſe.

Second demiſe.

fied, with the appurtenances, reſpectively demiſed to the ſaid *C.* in manner aforeſaid, in and upon the poſſeſſion of the ſaid *C.* thereof, and ejected the ſaid *C.* out of his ſaid ſeveral farms, his ſaid ſeveral terms therein not being ended, and other enormities, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *C.* ſaith, that he is injured and endamaged to the value of 10 *l.* and thereof he bringeth ſuit, *&c.*

J. K. L. M. &c.

Notice to the tenants.

I am informed that you are in poſſeſſion of, or claim title to the premiſes in this declaration of ejectment mentioned, or to ſome part thereof. And I, being ſued in this action as a caſual ejector, and having no claim or title to the ſame, do adviſe you to appear in —— term next in his majeſty's court of common bench at *Weſtminſter*, by ſome attorney of that court, and then and there, by rule of the ſame court, to cauſe yourſelves to be made defendants in my ſtead; otherwiſe I ſhall ſuffer judgment therein to be entered againſt me, and you will be turned out of poſſeſſion. I am

Your loving friend,

A. B.

Homine

Homine replegiando.

Cooke.

Michaelmas *Term in the Firſt Year of King* George *the Second.*

Count in Homine replegiando. C. B. Salk. 5, 705. Lilly's Ent. 293.

Berks, *to wit,* NL. gent. was attached to anſwer *W. H.* and *S.* his wife, of a plea, wherefore the ſaid *S.* he took, and taken holdeth, *&c. And whereupon* the ſaid *W.* and *S.* by *H. M.* their attorney complain that the ſaid *N.* on the 20th day of *May* in the 1ſt year of the reign of our lord the preſent king at *Wantage* in the county aforeſaid, took the ſaid *S.* and her taken ſtill holdeth: Wherefore they ſay that they are injured, and have damage to the value of 5000*l.* and thereof they bring ſuit, *&c.*

Plea, Non cepit.

And the ſaid *N.* in his proper perſon cometh and defendeth the force and injury, when, *&c.* and ſaith, that he did not take the ſaid *S.* in the ſaid declaration mentioned, in manner and form as the ſaid *W. H.* and *S.* his wife above complain againſt him; and of this he putteth himſelf upon the country.

Hil. 8 *Geo.* 2. *rot.* 1260. C. B.

Herefordſhire, *to wit.* RS. was attached to anſwer *W. B.* gent. of a plea, wherefore he took *S.* the wife of the ſaid *W.* and keepeth her taken, *&c. and whereupon* the ſaid *W.* by *J. C.* his attorney complaineth

plaineth that the ſaid *R.* on the 1ſt day of *June* in the year of our Lord 1734. at the pariſh of *B.* in the county aforeſaid, took the ſaid *S.* the wife of the ſaid *W.* and keepeth her yet taken; whereby he ſaith, that he is prejudiced and damnified to the value of 500 *l.* and thereof he bringeth ſuit, *&c.*

Plea *non cepit*; verdict *pro quer.* 100 *l.* damages.

Judgments.

Judgment in caſe by Nil dicit *againſt one deft. the action being brought againſt three defts. and two only plead.* 3 Mod. 101. Carth. 19. Comb. 18, 39. 2 Show. 469.

AND now at this day, *to wit*, *Saturday* next after the octave of St. *Hilary* in this ſame term, until which day the ſaid *E. S. T. P.* and *H. M.* had leave to imparl to the ſaid bill, and then to anſwer, *&c.* before the lord the king at *Weſtminſter* cometh as well the ſaid *G. R.* by his attorney aforeſaid, as the ſaid *E.* and *T.* by *R. G.* their attorney, and the ſaid *H.* at the ſame day, although ſolemnly demanded, doth not come, neither doth he ſay any thing thereupon, in bar or preclusion of the action of the ſaid *G.* by which the ſaid *G.* remaineth thereupon againſt the ſaid *H.* undefended, *&c.* For which it is conſidered that the ſaid *G.* ought to recover againſt the ſaid *H.* his damages by occaſion of the premiſes; *but* becauſe it is not known whether the ſaid *E.* and *J.* may be convicted of the premiſes above laid to their charge or not, and if they can be convicted, it is convenient that there ſhould be but one taxation of the ſaid damages; *Therefore*

Unica taxatio.

fore let the inquiſition for damages againſt the ſaid *H.* ſtay until the plea between the ſaid *G.* and the ſaid *E.* and *T.* be determined in ſome lawful manner, *&c. And* the ſaid *E. S.* and *T. P.* (all and all manner of exceptions as to the ſaid bill being ſaved to them) defend the wrong and injury. *And* the ſaid *E.* ſaith, *&c.* (The defendants pleaded ſeverally in abatement the privilege of *C. B.*)

Judgment by Nil dicit *in caſe* ſur aſſumpſ. *at the ſuit of an attorney.* C. B.

And the ſaid *C. K.* by *J. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the aforeſaid action of the ſaid *G. D.* whereby the ſaid *G.* remaineth againſt the ſaid *C.* therein undefended; wherefore the ſaid *G.* ought to recover againſt the ſaid *C.* his damages occaſioned by not performing the promiſes and undertakings aforeſaid: *But* becauſe it is not known what damages the ſaid *G.* has ſuſtained by occaſion of the not performing the promiſes and undertakings aforeſaid; *Therefore* the ſheriff is commanded, that by the oath of 12 honeſt and lawful men of his bailiwic, he diligently inquire what damages the ſaid *G.* has ſuſtained, as well by occaſion of not performing the promiſes and undertakings aforeſaid, as for his coſts and charges by him about his ſuit in this behalf laid out, and the inquiſition which the ſheriff ſhall make thereon, he make appear here on *Monday* next after the octave of St. *Martin*, under his ſeal and the ſeals of thoſe by whoſe oath he ſhall take ſuch inquiſition; *At which day* here cometh the ſaid *G.* in his proper perſon, and the ſheriff, *to wit*,

Inquiry awarded.

The return.

wit, *H. M.* eſq; and *R. H.* eſq; now return here a certain inquiſition taken before him at the court-houſe *Weſtminſter* in the county aforeſaid, the 24th day of *November* in the 14th year of the reign of our lord the now king, by the oath of 12 honeſt and lawful men of his bailiwic; by which it is found, that the ſaid *G.* hath ſuſtained damages by occaſion of the premiſes, beſides his coſts and charges by him about his ſuit in this behalf laid out, to 31 *l.* 10*s.* and for thoſe coſts and charges to 20*s.* *Therefore* it is conſidered, that the ſaid *G.* recover againſt the ſaid *C.* his damages aforeſaid, by the inquiſition aforeſaid in form aforeſaid found to 32 *l.* 10*s.* and alſo 10 *l.* 10*s.* to the ſaid *G.* at his requeſt, for his coſts and charges by the court here of increaſe adjudged, which ſaid damages amount in the whole to 43 *l.* *And* the ſaid *C.* in mercy, *&c.*

Final judgment.

Judgment ſigned 19 Jan. 1740.

Mercy.

And the ſaid *F.* ſaith nothing in bar or recluſion of the ſaid action of the ſaid *S.* of the ſaid treſpaſs made in the ſaid tenements newly aſſigned, whereby the ſaid *S.* remaineth againſt the ſaid *F.* therein undefended; wherefore the ſaid *S.* ought to recover againſt the ſaid *F.* his damages by occaſion of the ſaid treſpaſs: But becauſe it is not known what damages the ſaid *S.* hath ſuſtained by occaſion of the ſaid treſpaſs, the ſheriff is commanded, *&c.*

Judgment by Nil dicit *in treſpaſs after a new aſſignment.* C. B. 2 Vent. 49.

And the ſaid *L.* by *R. N.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar of the ſaid action of the ſaid *R.* whereby the ſaid *R.*

Judgment in debt by Nil dicit. C. B.

R. remaineth againſt the ſaid *L.* thereof undefended: *Therefore* it is conſidered, that the ſaid *R.* recover againſt the ſaid *L.* his ſaid debt, and his damages by the occaſion of the detaining of that debt, to 40*s.* to the ſaid *R.* by his aſſent by the court here adjudged; and the ſaid *L.* in mercy, *&c.*

Judgment in debt by Nil dicit *againſt an attorney, with imparlance.* C. B.

And the ſaid *S.* in his proper perſon cometh and defendeth the force and injury, *&c.* and the ſaid *J.* prayeth that the ſaid *S.* may anſwer to his ſaid bill, and the ſaid *S.* prayeth leave thereupon of imparling here until *Monday* next after the octave of St. *Hilary*; and he has, *&c.* the ſame day is given to the ſaid *J.* here, *&c.* *At which day* here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon and the ſaid *S.* further prayeth leave thereupon of imparling here until *Wedneſday* next after 15 days of *Eaſter*; and he hath, *&c.* the ſame day is given to the ſaid *J.* *&c.* *At which day* here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon; and the ſaid *S.* further prayeth leave thereupon of imparling here until *Friday* next after the morrow of the holy *Trinity*; and he hath, *&c.* the ſame day is given to the ſaid *J.* here, *&c.* *At which day* here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon, and as before the ſaid *J.* prayeth that the ſaid *S.* may anſwer to his ſaid bill and the ſaid *S.* as before defendeth the force and injury, *&c.* and ſaith nothing in bar of preclusion of the ſaid action of the ſaid

whereby the ſaid *J.* remaineth againſt the ſaid *S.* therein undefended: *Therefore* it is conſidered that the ſaid *J.* recover againſt the ſaid *S.* his ſaid debt and his damages by the occaſion of the detaining that debt to 30 *s.* to the ſaid *J.* by his aſſent, by the court here adjudged. And the ſaid *S.* in mercy, *&c.*

Judgment in debt by Nil dicit *againſt an executrix.* C. B.

And the ſaid *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the ſaid action of the ſaid *T.* and *D.* whereby the ſaid *T.* and *D.* remain againſt the ſaid *B.* therein undefended: *Therefore* it is conſidered, that the ſaid *T.* and *D.* recover againſt the ſaid *B.* their ſaid debt, and their damages by the occaſion of the detaining that debt to 50 *s.* to the ſaid *T.* and *D.* by their aſſent by the court here adjudged, to be levied of the goods and chattels which were of the ſaid earl at the time of his death, being in the hands of the ſaid *B.* to be adminiſtered, if ſhe hath ſo much thereof in her hands to be adminiſtered; and if ſhe hath not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *B.* And the ſaid *B.* in mercy, *&c.*

Judgment in debt by Nil dicit *againſt an executrix, with a* Remittitur *of part of the debt.* C. B. 3 Mod. 153. Salk. 65. in Comb. 87.

And the ſaid *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the ſaid action of the ſaid *T.* and *D.* whereby the ſaid *T.* and *D.* remain againſt the ſaid *B.* therein undefended: *And* hereupon the ſaid *T.* and *D.* freely here in court remit to the ſaid *B.* the ſaid 100*l.* and 400*l.*

in the ſaid declaration firſt demanded, and pray judgment againſt the ſaid *B.* for the ſaid 100*l.* and 400*l.* in the ſame declaration laſt demanded, together with their damages, coſts and charges by the occaſion of the detaining of the ſame 100*l.* and 400*l.* to be adjudged to them, *&c. Therefore* it is conſidered, that the ſaid *T.* and *D.* recover againſt the ſaid *B.* the ſaid 100*l.* and 400*l.* in the ſaid declaration laſt demanded, and their damages by the occaſion of the detaining of the ſame 100*l.* and 400*l.* to 7*l.* to the ſaid *T.* and *D.* by their aſſent, by the court here adjudged to be levied of the goods and chattels which were of the ſaid earl at the time of his death, being in the hands of the ſaid *D.* to be adminiſtered, if ſhe hath ſo much thereof in her hands to be adminiſtered; and if ſhe hath not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *B.* And the ſaid *B.* in mercy, *&c.* And that the ſaid *B.* be quit of the ſaid 100*l.* and 400*l.* in the ſaid declaration firſt demanded, *&c.*

Judgment in ejectment by Nil dicit. C.B.

And the ſaid *J.* by *R. B.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the ſaid action of the ſaid *C.* by which the ſaid *C.* remaineth thereupon undefended againſt the ſaid *J.* *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *J.* his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances, and his damages by occaſion of the ſaid treſpaſs and ejectment; but becauſe it is unknown

Award of writ of inquiry.

unknown what damages the ſaid *C.* hath ſuſtained by occaſion of the treſpaſs and ejectment aforeſaid; *It is commanded* to the ſheriff, that by the oath of 12 good and lawful men of his county he diligently inquire what damages the ſaid *C.* hath ſuſtained, as well by occaſion of the treſpaſs and ejectment aforeſaid, as for his coſts and charges by him expended about his ſuit in this behalf; and that the inquiſition which, *&c.* he make apparent here from the day of *Eaſter* in 15 days, under the ſeal, *&c.* and the ſeals, *&c.* The ſame day is given to the ſaid *J.* here, *&c.* *And* upon this the ſaid *C.* prayeth the writ of our lord the king to be directed to the ſheriff aforeſaid, to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances; and it is granted to him, returnable here at the time aforeſaid, *&c.*

Award of Habere fac. poſſeſſionem.

And the ſaid *W.* by *H. G.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *W.* of any anſwer to be given for the ſaid *W.* to the ſaid *E.* in the ſaid plaint, and he ſaith nothing elſe thereupon, by which the ſaid *E.* remaineth thereupon undefended againſt the ſaid *W.* [*the reſt is exactly the ſame as in a judgment by* Nil dicit.]

Judgment for the plt. by Non ſum informatus *in caſe* ſur aſſumpſit. C. B.

And the ſaid *E.* by *T. K.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſaid attorney ſaith, that he is not informed by the ſaid *E.* of any anſwer to be given for the ſaid *E.* to the ſaid

Judgment in debt by Non ſum informatus. C. B.

A. and *B.* in the ſaid plaint; and he ſaith nothing elſe thereupon, whereby the ſaid *A.* and *B.* remain againſt the ſaid *E.* therein undefended: *Therefore* it is conſidered, that the ſaid *A.* and *B.* recover againſt the ſaid *E.* their ſaid debt and their damages by occaſion of the detaining that debt, to 63*s.* to the ſame *A.* and *B.* by their aſſent by the court here adjudged. And the ſaid *E.* in mercy, *&c.*

Judgment in ejectment by Non ſum inform. C. B.

And the ſaid *H.* by *R. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *H.* of any anſwer to be given for the ſaid *H.* to the ſaid *G.* in the aforeſaid plaint, and he ſaith nothing elſe thereupon, by which the ſaid *C.* remaineth thereupon undefended againſt the ſaid *H.* *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *H.* his ſaid term yet to come of and in the manor and tenements aforeſaid, with the appurtenances; *Alſo* the ſaid *C.* ought to recover againſt the ſaid *H.* his damages by occaſion of the treſpaſs and ejectment aforeſaid; but becauſe [*the reſt exactly the ſame as in judgment by* Nil dicit.]

Judgment in debt againſt an executor by Relicta verificat. *after* Plene adminiſtravit *pleaded.*

At which day come here as well the ſaid *C.* as the ſaid *A.* by their attornies aforeſaid, and hereupon the ſaid *A.* departing from his averment aforeſaid by him above pretended, ſaith, that he cannot gainſay the action aforeſaid of the ſaid *C.* nor that he on the ſaid day of obtaining the original writ of the ſaid *C.* had divers goods and chattels which were

the

the ſaid *T.*'s at the time of his death in his hands to be adminiſtered, to the value of the ſaid debt, whereout he could have ſatisfied the ſaid *C.* for that debt, as the ſaid *A.* hath above alledged: *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *A.* his debt aforeſaid, to be levied of the goods and chattels which were the ſaid *T.*'s at the time of his death, in the hands of the ſaid *A.* to be adminiſtered, and 80*s.* for his damages by occaſion of detaining that debt, adjudged by the court here to the ſaid *C.* with his aſſent, to be levied alſo of the ſaid goods and chattels, if the ſaid *A.* hath ſo much thereof to be adminiſtered; and if he hath not, then the damages aforeſaid to be levied of the ſaid *A.*'s proper goods and chattels. And the ſaid *A.* in mercy, *&c.*

Judgment in caſe againſt an executor by Relicta verific. *after* Plene adminiſtravit *pleaded.*

At which day come here as well the ſaid *C.* as the ſaid *A.* by their attorneys aforeſaid; *And* hereupon the ſame *A.* departing from his averment and proof by him above pretended, ſaith, that he cannot gainſay the action aforeſaid of the ſaid *C.* or that the ſaid *J.* in his life-time undertook in manner and form as the ſaid *C.* above complaineth againſt him; by reaſon whereof the ſaid *C.* ought to recover againſt the ſaid *A.* his damages by occaſion of the non-performance of the promiſes and undertakings aforeſaid: But becauſe it is unknown, *&c.*

Signed for not paying for the iſſue book.

Imparlance.

And the ſaid *L.* in his proper perſon cometh and defendeth the force and injury, when, *&c.* and prayeth leave to imparl here until *Friday* next after the morrow of the holy

Trinity, and he hath it, *&c.* The ſame day is given to the ſaid *J.* here, *&c.* And now here at this day, *to wit*, the ſaid *Friday*, *&c.* come as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *L.* in his proper perſon; and hereupon the ſaid *J.* prayeth that the ſaid *L.* may anſwer to his aforeſaid bill.

Plea, Non eſt factum.

And the ſaid *L.* as before defendeth the force and injury, when, *&c.* and ſaith, that he ought not to be charged with the debt aforeſaid, by virtue of the writing aforeſaid, becauſe he ſaith, that that writing is not his deed; and of this he putteth himſelf upon the country; *and* the ſaid *J.* likewiſe doth the ſame. *Therefore*, &c. *At which day* come here as well the ſaid *J.* by his ſaid attorney, as the ſaid *L.* in his proper perſon; and hereupon the ſaid *L.* waiving his plea aforeſaid by him above pleaded, ſaith, that he cannot deny the action of the ſaid *J.* nor but that the ſaid writing is his deed, nor but that he oweth to the aforeſaid *J.* the ſaid 200 *l.* in manner and form as the ſaid *J.* hath above declared againſt him: *Therefore* it is conſidered, *&c.*

Judgment by Relicta verificatione.

Judgment of Non Pros' *in replevin, for not entering the iſſue.*

And hereupon the ſaid *B.* although ſolemnly demanded, cometh not, nor hath he entered his iſſue aforeſaid, neither doth he further proſecute his writ aforeſaid; *Therefore* it is conſidered, that the ſaid *B.* and his pledges for proſecuting thereof be in mercy, *&c.* let the names of the pledges be inquired, *&c.* and that the ſaid *J. S.* go thereof without day, *&c.* and that he have a return of the goods and chattels aforeſaid, and in what manner

manner, &c. let the ſheriff make known hereon.——*And* hereupon the ſaid *J. S.* prayeth that the juſtices here will at their diſcretion here in court aſſeſs his damages ſuſtained as well by reaſon of the premiſes, as for his coſts and charges by him expended about his ſuit in this behalf: *Whereupon* the ſaid juſtices here, as well at the prayer of the ſaid *J. S.* as by the conſent of the ſaid *B.* do aſſeſs the damages of him the ſaid *J. S.* ſuſtained as well by reaſon of the premiſes, as for his ſaid coſts and charges, to ——: *Therefore* it is conſidered, that the ſaid *J. S.* recover againſt the ſaid *B.* his damages aforeſaid aſſeſſed by the juſtices here in form aforeſaid. And the ſaid *B.* in mercy, &c.

At which day before our lord the king at *Weſtminſter* cometh the ſaid *D.* by his attorney aforeſaid, and the ſaid *P.* although called cometh not; and it appearing to the court of our ſaid lord the king now here, that the ſaid *P.* hath neglected to bring the iſſue above joined on to be tried, according to the courſe and practice of the ſaid court of our ſaid lord the king now here: *Therefore* according to the form of the ſtatute in that caſe lately made and provided, it is conſidered by the ſaid court, that the ſaid *P.* take nothing by his aforeſaid bill, but that he and his pledges for proſecuting, *to wit*, *John Doe* and *Richard Roe*, be in mercy, &c. and that the ſaid *D.* go thereof without day; *And* it is further conſidered that the ſaid *D.* recover againſt the ſaid *P.* 7*l.* for his coſts and charges by him about his defence in this behalf

Judgment of Non proſ. *for not proceeding to trial.* B. R.

Stat. 14 Geo. 2. c. 17.

half ſuſtained, adjudged by the court of our ſaid lord the king now here to the ſaid *D.* at his requeſt, according to the form of the ſtatute in the like caſe made and provided, and that the ſaid *D.* have execution thereof.

Judgment for the plt. on a demurrer to a plea in caſe ſur aſſump. C. B.

And becauſe the juſtices here will adviſe themſelves of and upon the premiſes before they give judgment thereupon, day is given to the parties here until from the day of St. *Michael* in three weeks, to hear their judgment thereupon, for that the ſame juſtices are not thereupon, *&c.* *At* which day cometh here as well the ſaid *S.* as the ſaid *N.* by their attornies aforeſaid, and upon this the ſaid premiſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſame juſtices here, that the ſaid plea of the ſaid *N.* above pleaded in bar, and the matter contained in the ſame, are not ſufficient in law to preclude the ſaid *S.* from having his action againſt the ſaid *N.* as the ſaid *S.* has above alledged; for which the ſaid *S.* ought to recover his damages by occaſion of the premiſes againſt the ſaid *N.* But becauſe it is not known what damages, *&c.*

Judgment in debt for the plt. on a demurrer to a plea. B. R.

At which day before the lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid; upon which, all and ſingular the premiſes being ſeen and fully underſtood by the court of the ſaid lord the king here, and mature deliberation being had thereupon, it ſeemeth to the court of the ſaid lord the king here, that the plea of the ſaid *W. P.* above pleaded in bar of the ſaid

ſaid action of the ſaid *D. W.* is not ſufficient in law to preclude the ſaid *D.* from having her ſaid action againſt the ſaid *W. P. Therefore* it is conſidered, that the ſaid *D.* recover againſt the ſaid *W.* her ſaid debt and alſo 9 *l.* for her damages which ſhe hath ſuſtained as well by the occaſion of the detaining that debt, as for her coſts and charges expended by her about her ſuit in this behalf adjudged by the court of the ſaid lord the king now here to the ſaid *D.* by her aſſent. And the ſaid *W. P.* in mercy, *&c.*

Judgment of Reſpondeas ouſter *on a demurrer to a plea in abatement in caſe.* B. R.

At which day before the lord the king at *Weſtminſter* cometh as well the ſaid *T. S.* in his proper perſon, as the ſaid *T. K.* and *B.* by their attornies aforeſaid; upon which, all and ſingular the premiſes being ſeen and by the court here fully underſtood, and mature deliberation being had thereupon, for that it ſeemeth to the ſaid court of the lord the king now here, that the ſaid plea above pleaded by the ſaid *T. K.* and *B.* in manner and form aforeſaid, and the matter in the ſame contained, are not ſufficient to quaſh the bill of the ſaid *T. S.* thereupon againſt the ſaid *T. K.* and *B. It is conſidered*, that the ſaid *T. K.* and *B.* anſwer further to the ſaid bill of the ſaid *T. S. And* upon this the ſaid *T. K.* and *B.* being ſolemnly demanded, come by *J. G.* their attorney, and defend the force and injury, when, *&c.* and pray, *&c.* [*Demurrer.*]

Judgment of Reſpondeas ouſter *on a demurrer to a replication on a plea in abatement.* B. R.

At which day before the lord the king at *Weſtminſter* came the parties aforeſaid, by their attornies aforeſaid, whereupon all and ſingular the premiſes aforeſaid being ſeen and by the court here fully underſtood, and ma-

ture deliberation being had thereupon, for that it ſeemeth to the ſaid court of the lord the king now here, that the ſaid plea by the ſaid *R.* in manner and form aforeſaid above in replying pleaded, and the matter therein contained, are good and ſufficient in law to compel the ſaid Sir *J.* to anſwer farther to the ſaid bill of the ſaid *R.* thereupon againſt the ſaid Sir *J.* *It is conſidered*, that the ſaid Sir *J.* anſwer further to the ſaid bill of the ſaid *R.* *And* hereupon the ſaid Sir *J. S.* knt. and bart. againſt whom the ſaid *R.* above declared, by the name of Sir *J. S.* bart. being ſolemnly called by the ſaid *H. T.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, *&c.*

Award of inquiry in caſe ſur aſſumpſit. C. B. 1 D 70. p. 7. 3 Mod. 190.

But becauſe it is unknown what damages the ſaid *E.* has ſuſtained by occaſion of the premiſes, *It is commanded* to the ſheriff, that by the oath of good and lawful men of the county aforeſaid, he diligently inquire what damages the ſaid *E.* hath ſuſtained, as well by occaſion of the premiſes aforeſaid, as for her coſts and charges expended by her about her ſuit in this behalf, and let the ſheriff make apparent the inquiſition which he ſhall make thereof to the juſtices of the lord the king at *Weſtminſter* from the day of *Eaſter* in 15 days, under his ſeal and the ſeals, *&c.* *At which day* here cometh the ſaid *E.* by her attorney aforeſaid, and the ſheriff did nothing therein, neither did he ſend the writ: *Therefore*, as at firſt, let there be another writ to him thereupon in form aforeſaid, returnable here from the day of the holy *Trinity*

Vic' non miſit breve.

Alias *awarded.*

nity in three weeks, *&c.* *At which day* here cometh the ſaid *E.* by her attorney aforeſaid, and the ſheriff, namely Sir *B. T.* knt. and Sir *T. K.* knt. now returns here a certain inquiſition taken before him at the *Sugar-loaf* in *Hatton-garden* in the county aforeſaid, on the 18th day of *June* laſt paſt, by the oath of 12, *&c.* by which it is found, that the ſaid *E.* hath ſuſtained damages by occaſion of the premiſes, over and above her coſts and charges laid out by her about her ſuit in this behalf, to 200*l.* and for thoſe coſts and charges to 20*s.* *Therefore, &c.*

Scire facias Vic' London' *againſt the tertenants of* F. R. *on a judgment recovered againſt him by* J. D. *Return* Nihil. Teſtatum Vic' Ebor'. Vic' non miſit b're. Alias Sci' fac. *Return* Scire feci *to Sir* S. D. *tenant of part, and to* J. R. *tenant of other part.*

Judgment on a Sci. fac. *againſt tertenants, where two are returned tenants, one makes default and the other pleads to iſſue.* B. R.

And *now* here at this day, *to wit*, the ſaid *Saturday* next after three weeks of St. *Michael*, before the lord the king at *Weſtminſter* came as well the ſaid *J. D.* by his attorney aforeſaid, as the ſaid Sir *S. D.* by *S. W.* his attorney, and the ſaid *J. R.* ſo ſummoned, *&c.* at the ſame day, being ſolemnly called, came not, but made default: *Therefore* it is conſidered, that the ſaid *J. D.* have execution againſt the ſaid *J. R.* of the debt and damages aforeſaid, of the lands and tenements whereof the ſaid *J. R.* is above returned tenant, which were of the ſaid *F. R.*

of

of which the ſaid *F. R.* was ſeiſed at the time of giving the ſaid judgment, being in the hands of the ſaid *J. R.* by the default of the ſaid *J. R.* *And upon this* the ſaid *J. D.* by the ſtatute, *&c.* chuſeth to be delivered to him a moiety of all the ſaid lands and tenements with the appurtenandes, whereof the ſaid *J. R.* ſo as aforeſaid is returned tenant, which were of the ſaid *F. R.* at the time of giving the ſaid judgment, to hold to the ſaid *J. D.* and his aſſigns, as their freehold, according to the form of the ſaid ſtatute, until the debt and damages aforeſaid ſhall be thereof levied, and he prayeth the writ of the ſame lord the king thereupon, to be directed to the ſaid ſheriff of *York*; *And* it is granted him, *&c.* returnable before the ſaid lord the king on *Saturday* next after the octave of the purification of the bleſſed virgin *Mary*, *&c.*

Elegit prayed againſt him,

and awarded.

The other deft. pleads.

And the ſaid Sir *S. D.* ſaith, *&c.*

Judgment after two Nihils *on a* Sci. fac. *to revive a former judgment on a* Sci. fac. *upon a recognizance of bail.* C. B.

And upon this the ſaid *W. H.* and *A.* pray execution againſt the ſaid *R. W. E.* and *L.* of the ſaid ſeveral ſums of money ſeverally acknowledged by them in form aforeſaid, according to the form of the judgment of adjudication of execution aforeſaid, to be adjudged to them: *Therefore* it is conſidered, that the ſaid *W. H.* and *A.* have execution againſt the ſaid *R. W. E.* and *L.* according to the form of the ſaid judgment of adjudication of execution aforeſaid, by default, *&c.*

Judgment after two Nihils *on a* Sci. fac. *upon a recog-*

And upon this the ſaid *A.* prayeth execution againſt the ſaid *R.* and *W.* of the ſaid ſeveral ſums of 44 *l.* ſeverally acknowledged by

by them in form aforeſaid, and alſo againſt the ſaid *L.* of the ſaid 88 *l.* acknowledged by him in form aforeſaid, according to the form of the ſaid recognizance: *Therefore* it is conſidered, that the ſaid *A.* have execution againſt both of them the ſaid *R.* and *W.* of the ſaid ſeveral ſums of 44 *l.* ſeverally acknowledged by them in form aforeſaid, and againſt the ſaid *L.* of the ſaid 88 *l.* acknowledged by him in form aforeſaid by default, *&c.* *nizance of bail.* C. B.

Therefore it is conſidered, that the ſaid *M.* have execution againſt the ſaid *R.* of the debt and damages aforeſaid by default, *&c.* *Judgment after one* Nihil *on a* ſci. fac. *to receive a judgment in debt.* C. B.

Therefore it is conſidered, that the ſaid *J.* recover againſt the ſaid *T.* her ſaid debt, and her damages aforeſaid, aſſeſſed by the ſaid jury in form aforeſaid to 21 *s.* And alſo 15 *l.* 6 *s.* to the ſaid *J.* at her requeſt, for her ſaid coſts and charges, by the court here of increaſe adjudged: Which ſaid damages in the whole amount to 16 *l.* 7 *s.* And the ſaid *T.* in mercy, *&c.* *Judgment in debt after verdict for the plaintiff.* C. B.

And becauſe the juſtices here are willing to adviſe themſelves of and upon the premiſes before they give judgment thereupon, day is given to the ſaid parties here until on the octave of St. *Hilary*, to hear their judgment thereupon, for that the ſame juſtices here are not yet, *&c.* *At which day* here came as well the ſaid *T.* as the ſaid *H.* by their attornies aforeſaid. And becauſe the juſtices here are willing [illegible] her to adviſe themſelves of and upon the premiſes before they give judgment thereupon, day is further *Judgment for the defendant in ejectment, on a ſpecial verdict.* C. B.

ther given to the ſaid parties here until from the day of *Eaſter* in 15 days to hear their judgment thereupon, for that the ſame juſtices here are not yet, *&c.* *At which day* here came as well the ſaid *T.* as the ſaid *H.* by their attornies, *&c.* aforeſaid, [*continuances in like manner to the octave of St.* Hilary.] *At which day* here came as well the ſaid *T.* as the ſaid *H.* by their attornies aforeſaid; whereupon the premiſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſame juſtices here, that the ſaid *H.* is in nothing guilty of the treſpaſs and ejectment aforeſaid, as he the ſaid *H.* above in pleading for himſelf hath alledged; *Therefore* it is conſidered, that the ſaid *T.* take nothing by his ſaid writ, but be in mercy for his falſe clamor thereupon; and that the ſaid *H.* go thereof without day, *&c.* *Alſo* it is conſidered that the ſaid *H.* recover againſt the ſaid *T.* his damages by occaſion of the premiſes, to 15*l.* 4*s.* by the direction of the juſtices here, to the ſame *H.* at his requeſt, for his coſts and charges by him in that behalf ſuſtained, according to the form of the ſtatute, *&c.* by the court here adjudged, *&c.*

Judgment for the defendant on a verdict upon Non aſſumpſit. C. B.

Becauſe as well, *&c.* *At which day* the jury between the parties aforeſaid in the plea afterwards was thereupon reſpited between them here until to this day, *to wit*, from the day of St. *Michael* in three weeks then next following, unleſs the juſtices of our ſovereign lord and lady the king and queen, aſſigned to take the aſſiſes in the county aforeſaid,

ſaid, by form of the ſtatute, *&c.* ſhould firſt come on *Monday* the 15th day of *September* next paſt, at the town of *Huntingdon* in the county aforeſaid. And now here at this day the ſaid *J. S.* cometh by his attorney aforeſaid, and the ſaid juſtices of aſſize, before whom, *&c.* ſent here their record in theſe words; *Afterwards* [*ſee Poſteas*] *Therefore* it is conſidered, that the ſaid *J. M.* take nothing by his ſaid writ, but be in mercy for his falſe clamor thereupon. And that the ſaid *J. S.* go thereupon without day, *&c.* It is alſo conſidered, that the ſaid *J. S.* recover againſt the ſaid *J. M.* his damages by occaſion of the premiſes, to 7 *l.* by the direction of the juſtices here adjudged by the court here according to the form of the ſtatute, *&c.* to the ſaid *J. S.* at his requeſt, for his coſts and charges by him ſuſtained in this behalf.

Signed 17 November 2 W. & M.

Becauſe as well, *&c. At which day* the jury between the parties aforeſaid in the plea aforeſaid was reſpited thereupon between them here until to this day, to wit, from the day of the *Holy Trinity* in three weeks then next following, unleſs Sir *E. H.* knt. chief juſtice of our lord the king of the bench here aſſigned by form of the ſtatute, *&c.* ſhould firſt come on *Saturday* the 11th day of *June* next paſt, at *Weſtminſter* within the hall there commonly called *Weſtminſter-hall* in the county aforeſaid; and now here at this day the ſaid *G.* comes by his attorney aforeſaid. And the ſaid chief juſtice before whom, *&c.* ſent here his record in theſe

Judgment for the plaintiff on a verdict upon Non aſſumpſit. C. B.

Signed 29 November 3 Jac. 2.

theſe words, *Afterwards* [*ſee Poſteas*] *Therefore* it is conſidered, that the ſaid *G.* do recover his ſaid damages againſt the ſaid *R.* to 75*l.* 5*s.* aſſeſſed by the ſaid jury in form aforeſaid; and alſo 13*l.* 15*s.* adjudged by the court here, to the ſaid *G.* at his requeſt, of increaſe for his ſaid coſts and charges; which ſaid damages in the whole amount to 89*l.* And the ſaid *R.* in mercy, *&c.*

Judgment of repleader after verdict for the plaintiff. B. R.

Afterwards, &c. [*the Poſtea*] *And* upon this the ſaid *W.* ſaith, that the court of our ſaid lord the king now here ought not to proceed to give judgment upon the ſaid verdict, becauſe he ſaith that the ſaid plea of the ſaid *A.* above in ſurrejoining pleaded is not ſufficient in law, and the iſſue ariſing thereupon is not aptly joined; upon which the ſaid plea by the ſaid *A.* above in ſurrejoining pleaded, and the iſſue thereupon joined, being ſeen and underſtood by the court of the ſaid lord the king, before the king himſelf, it ſufficiently appeareth to the court of the ſaid lord the king now here, that the ſaid plea above in ſurrejoining pleaded, is inſufficient, and that the iſſue ariſing thereupon is not aptly joined; upon which it is told to the ſaid parties to replead, to wit, to the ſaid *A.* to ſurrejoin anew to the ſaid rejoinder of the ſaid *W.* and that the ſaid parties further proceed thereupon until an iſſue by the law, or by the country, ſhall be thereupon joined. *Upon which* the ſaid *A.* as at firſt ſaith, *&c.*

Judgment in ejectment after verdict for the plaintiff. C. B.

And becauſe [*continuance by Cur' adviſare vult*] *At which day* here cometh as well the ſaid

ſaid *C.* as the ſaid *T.* by their attornies aforeſaid. And upon this the premiſes being ſeen and fully underſtood by the juſtices here, *It is conſidered*, that the ſaid *C.* recover againſt the ſaid *T.* his ſaid term yet to come of and in the ſaid tenements, with the appurtenances and his ſaid damages to 40*s.* 6*d.* aſſeſſed by the ſaid jury in form aforeſaid. And alſo 7*l.* 19*s.* 6*d.* to the ſaid *C.* at his requeſt, for his ſaid coſts and charges by the court here of increaſe adjudged; which ſaid damages in the whole amount to 10*l.* and that the ſaid *T.* be taken, *&c.* *And* upon this the ſaid *C.* prayeth the writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe him to have his poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances. And it is granted to him returnable here from the day of *Eaſter* in 15 days, *&c.*

Habere facias poſſeſſionem.

And becauſe [*continuances by cur' adviſare vult*] *At which day* here cometh as well the ſaid *G.* as the ſaid *E.* by their attornies aforeſaid. Upon which, all and ſingular the premiſes aforeſaid being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſame juſtices that the plea of the ſaid *E.* above in rejoining pleaded in manner and form aforeſaid, and the matter in the ſame contained, are not ſufficient in law to preclude the ſaid *G.* from having his ſaid action thereupon, as the ſaid *G.* hath within alledged; *It is conſidered*, that the ſaid *G.* recover againſt the ſaid *E.* his ſaid ſeveral damages

Judgment in treſpaſs for the plaintiff, after verdict on Not guilty as to part, and a demurrer to a rejoinder as to the reſidue; whereupon the jury gave 300 l. *damages, as to the iſſue in fact, and* 200 l. *contingent damages on the iſſue in law.*

mages to 500*l.* and the ſaid 40*s.* aſſeſſed by the ſaid jury in form aforeſaid, and alſo 28*l.* adjudged by the court here to the ſaid *G.* at his requeſt, of increaſe, for his ſaid coſts and charges, which ſaid damages in the whole amount to 530*l.* And that the ſaid *E.* be taken, *&c.*

Judgment in covenant after verdict for the plaintiff. C. B.

Therefore it is conſidered, that the ſaid *J.* recover againſt the ſaid *T.* her ſaid damages aſſeſſed by the ſaid jury in form aforeſaid, to 61*l.* and alſo 34*l.* 12*s.* 10*d.* to the ſaid *J.* at her requeſt, for her ſaid coſts and charges, by the court here of increaſe adjudged; which ſaid damages in the whole amount to 95*l.* 12*s.* 10*d.* and the ſaid *T.* in mercy, *&c.*

Judgment for the defendants in replevin on a nonſuit at Niſi prius. C. B.

[The *Poſtea*] *Therefore* it is conſidered, that the ſaid *W. C.* and his pledges for proſecuting are in mercy, *&c. Quer' nom' pleg', &c.* and that the ſaid *W. B. J. T.* and *C.* go thereof without day, *&c.* and that they have a return of the cattle, *&c.* and in what manner, *&c.* the ſheriff make appear here on the octave of St. *Hilary.* *Alſo* it is conſidered, that the ſaid *W. B. J. T.* and *C.* recover againſt the ſaid *W. C.* their ſaid damages aſſeſſed by the ſaid jury in form aforeſaid to 40*s.* 2*d.* and alſo 10*l.* 19*s.* 10*d.* to the ſaid *W. B. J. T.* and *C.* at their requeſt for their ſaid coſts and charges by the court here of increaſe adjudged, which ſaid damages in the whole amount to 13*l.* *&c.*

Caſe

Caſe againſt E. S. T. P. *and* H. M. *for accuſing* G. R. *of high treaſon*; M. *lets judgment go by default, and the other two plead to iſſue; the jury give damages* 1000 l. *againſt* S. 500 l. *againſt* P. *and* 500 l. *againſt* M. *whereupon the plaintiff enters a* Nolle proſequi *as to* P. *and* M. *and has judgment againſt* S.

Nolle proſequi *after verdict as to two defendants.* 3 Mod. 101. Carl. 19. Comb. 18, 39. 2 Show. 469. Cro. Car. 54, 239, 243. 2 R. Ab. 100. 1 R. Rep. 30. 1 Bulſt. 157. Styles 299. 1 Sand. 275, 268. 2 Sand 379. Raſt. Ent. 127. a. 654. b. 677. b. 583. a. 555. a. Co. Ent. 650. Trin. 38 Eliz. ro. 634. Hil. 1 Car. ro. 582.

And upon this the ſaid *G.* in court here confeſſeth that he will not further proſecute againſt the ſaid *T. P.* and *H. M.* or either of them of the plea aforeſaid, but wholly diſavoweth and refuſeth to proſecute further againſt either of them in the premiſes; *Therefore* it is conſidered that the ſaid *G. R.* recover againſt the ſaid *E. S.* the ſaid damages aſſeſſed by the ſaid jury in form aforeſaid, and alſo by the court of the ſaid lord the king now here adjudged to the ſaid *G.* by his aſſent of increaſe for his ſaid coſts and charges; which ſaid damages in the whole amount to and that the ſaid *E. S.* be taken, *&c.*

Judgment againſt the 3d deft. B. R.

Poſteas.

*A*Fterwards (that is to ſay) on the day and year, and at the place within mentioned, cometh as well the within named *R. L.* by his attorney within named, as the within named *M. U.* in his proper perſon before Sir *J. W.* knt. the chief juſtice within named;

Poſtea, *verdict for the plt. in caſe* for aſſumpſit. C. B.

named; and the jurors of the jury, whereof mention is within made, ſummoned to be upon that jury, being impanelled and drawn by ballot according to the form of the ſtatute, *&c.* and being called over, come; who to ſpeak the truth of the matters within contained being tried and ſworn on their oath ſay, that the ſaid *M. U.* did undertake and promiſe in manner and form as the ſaid *R. L.* hath within complained againſt him; and they aſſeſs the damage of the ſaid *R. L.* by reaſon thereof beſides his coſts and charges by him laid out about his ſuit in this behalf to 3*l.* 8*s.* and for his ſaid coſts and charges to 40*s.*

John Hawe leſſee of *Joſhua Teſdale* againſt *William Burton* and *Mary* his wife.
Trin. 3 *Jac.* 2. *B. R. ro.* 1038.

Poſtea, *ſpecial verdict in ejectment.* B. R. Comb. 84.

Afterwards on the day and at the place within contained before Sir *R. H.* knt. one of the juſtices of the lord the king aſſigned to hold pleas before the king himſelf, and Sir *T. J.* knt. one of the barons of the *Exchequer* of the ſaid lord the king, juſtices of the ſaid lord the king, aſſigned to take the aſſiſes in the county of *B.* by form of the ſtatute, *&c.* cometh as well the within named *J. H.* as the within written *W. B.* and *M.* his wife by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, ſome of them, *to wit*, *N. P. T. P. R. B. J. F. T. P. R. L. R. W. R. J. T. H. J. P.* and

and *J. W.* come and are ſworn on that jury; and becauſe the reſidue of the jurors of that jury do not appear, therefore another of the perſons ſtanding around hereunto elected by the ſheriff of the county aforeſaid, is added a-new at the requeſt of the ſaid *J. H.* and by the command of the ſaid juſtices, whoſe name is affiled in the panel within written, according to the form of the ſtatute in ſuch caſe lately made and provided: And the juror ſo added a-new, *to wit*, *T. E.* being demanded alſo cometh, who together with the ſaid other jurors firſt impanelled and ſworn, being choſen, tried and ſworn to ſpeak the truth of the within contained, *ſay* upon their oath, that one *C. T.* late huſband of the ſaid *M.* in his life-time, was ſeiſed of and in the tenements within written, with the appurtenances in his demeſne as of fee; and being ſo ſeiſed thereof, afterwards, and before the within written time in which it is ſuppoſed the treſpaſs and ejectment within written was done, *to wit*, on the 18th day of *October* in the 36th year of the reign of the lord *Charles* II. late king of *England*, *&c.* made his teſtament and laſt will in writing; and that the ſaid *C.* in his life-time then ſigned, ſealed, publiſhed and declared that teſtament before four lawful and credible witneſſes, and that that teſtament was then atteſted and ſubſcribed by the ſame four lawful and credible witneſſes in the preſence of the ſame *C. to wit*, at *A.* within written, as the law requireth: And the ſaid *C.* by his ſaid teſtament gave to the ſaid *M.* the tene-

Tales.

Verdict.

C. T. ſeiſed in fee.

Made his will.

Gave to the deft. M. in tail.

ments within written amongſt others, in ſpecial tail, the tenor of which ſaid laſt will of the ſaid *C.* followeth in theſe words, *In the name of God*, &c. [the will *in hæc verba.*] And the ſaid jurors upon their ſaid oath further ſay, that the ſaid *C.* in his life-time, at the ſaid time of making and publiſhing his ſaid teſtament was within the age of 21 years, *to wit*, of the age of 20 years, and not more; *and* that the ſaid *C.* in his life-time afterwards, being of the age of 21 years and more, he a-new publiſhed and declared his ſaid teſtament made as aforeſaid, to ſtand and be his laſt will in the preſence of three legal credible witneſſes then there preſent, as the law requireth, *to wit*, at the pariſh within written; but the teſtament of the ſaid *C.* was not then produced before the ſame witneſſes, neither did the ſame witneſſes then and there ſubſcribe their names to the teſtification and publication of the ſame; and that afterwards the ſaid *C.* died, being ſeiſed of the ſame tenements as aforeſaid. *And* the ſaid jury upon their ſaid oath further ſay, that the within named *J. T.* is couſin and heir of the ſaid *C.* *And* the ſaid jury upon their ſaid oath further ſay, that the ſaid *M.* now defendant was wife of the ſaid *C.* in his life-time, after whoſe death ſhe entered into the within written tenements, and was ſeiſed thereof, as the law requireth: *And* afterwards the ſaid *M.* was joined in wedlock with the ſaid *W. B.* and afterwards the ſaid *W.* entered into the within written tenements with the appurtenances, and was ſeiſed thereof

The will.

Teſtator then under 21.

Republiſhed at his full age.

In the preſence of three witneſſes.

But the will not produced, neither did the witneſſes ſubſcribe their names.

Teſtator died ſeiſed.

Leſſor of plt. heir of teſtator.

Defendant M. *entered.*

Married with the other defendant who entered in her right.

thereof in the right of the said *M.* as the law requireth. *And* the said *W.* and *M.* so seised, and afterwards and before the within written time in which, *&c.* the said *J. T.* entered into the tenements within written, with the appurtenances, and was seised thereof as the law requireth; and being so seised thereof, the said *J.* afterwards, *to wit*, on the within written 1st day of *October* in the 2d year of the reign of the lord *James* II. then king of *England*, *&c.* at *A.* within written, demised, granted, and to farm let to the said *J. H.* the tenements within written with the appurtenances, To have and to hold the tenements within written with the appurtenances to the said *J. H.* and his assigns from the feast of St. *Michael* the archangel then last past until the full end and term of seven years thence next following fully to be complete and ended: *By* virtue of which said demise the said *J. H.* entered into the within written tenements with the appurtenances, and was possessed thereof, as the law requireth, until the said *W. B.* and *M.* afterwards, *to wit*, on the said 1st day of *October* in the 2d year aforesaid, at *A.* aforesaid, with force and arms, *&c.* entered into the tenements within written, with the appurtenances, in and upon the possession of the said *J. H.* thereof, and him the said *J. H.* from his said farm, his said term therein not yet ended, ejected, drove out and amoved, as the said *J. H.* within complaineth against them. *But whether* upon the whole matter aforesaid above found in form aforesaid,

Lessor of the plt. entered.

Leases to the plaintiff.

Plt. enters.

Ejected by defendants.

ſaid, the ſaid *W.* and *M.* are guilty in law of the treſpaſs and ejectment aforeſaid or not, the ſaid jurors are intirely ignorant, and pray the advice of the court here. *And if* upon the whole matter aforeſaid found in form aforeſaid, it ſhall ſeem to the court here, that the ſaid *W.* and *M.* are guilty in law of the treſpaſs and ejectment within written, *then* the ſaid jurors ſay upon their ſaid oath, that the ſaid *W.* and *M.* are guilty of the ſaid treſpaſs and ejectment, as the ſaid *J. H.* within complaineth againſt them: And they aſſeſs the damages of the ſaid *J.* on that occaſion, beſides his coſts and charges expended by him about his ſuit in this behalf to 6*d.* and for thoſe coſts and charges to 40*s.* *And if* upon the whole matter aforeſaid above found in form aforeſaid, it ſhall ſeem to the court here that the ſaid *W.* and *M.* are not guilty in law of the treſpaſs and ejectment aforeſaid, *then* the ſaid jurors ſay upon their ſaid oath, that the ſaid *W.* and *M.* are not guilty of the treſpaſs and ejectment aforeſaid, as they within in pleading for themſelves have alledged.

Replevin.

Thomſon.

Hilary 16 George *the Second.*

Declaration in Replevin. C. B.

Lincolnſhire, to wit. R. B. was ſummoned to anſwer to S. B. gent. in a plea wherefore he took the cattle of the ſaid *S.* and unjuſtly detained the ſame againſt ſure-

ties

ties and pledges, &c. *And whereupon* the ſaid *S.* by *W. P.* his attorney complaineth, that the ſaid *R.* on the 2d day of *Auguſt* in the year of our Lord 1742. at *M.* in the ſaid county in a certain piece of ground there called the *Lord's Meadows*, took the cattle, *to wit*, three heifers and nine ſteers of the ſaid *S.* and unjuſtly detained the ſame againſt ſureties and pledges until, &c. whereby the ſaid *S.* ſaith that he is prejudiced and damnified to the value of 50 *l.* and thereof he bringeth ſuit, &c.

Avowry as leſſee for years for damage-feaſant.

And the ſaid *R.* by *J. C.* his attorney cometh and defendeth the force and injury when, &c. and well avoweth the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. becauſe he ſaith, that *W.* duke of *P.* before the ſaid time when, &c. was ſeiſed of the ſaid piece of ground called the *Lord's Meadows* in which, &c. with the appurtenances in his demeſne as of fee; and being ſo ſeiſed thereof he the ſaid *W.* duke of *P.* long before the time when, &c. *to wit*, on the 1ſt day of *April* in the year of our Lord 1740. at *M.* aforeſaid demiſed the ſaid piece of ground in which, &c. with the appurtenances to the ſaid *R.* *To have and to hold* the ſame to the ſaid *R.* from the feaſt of the annunciation of the bleſſed virgin *Mary* then laſt paſt, for and during the term of 21 years from thence next enſuing and fully to be complete and ended. *By virtue* of which ſaid demiſe thereof the ſaid *R.* entered into the ſaid demiſed piece of ground in which, &c. with the appurtenances, and

at the ſame time when, &c. was and ſtill is poſſeſſed thereof by virtue of the ſaid demiſe; and becauſe the ſaid cattle in the ſaid declaration mentioned at the ſaid time when, &c. were in the ſaid piece of ground in which, &c. eating the corn of the ſaid *R.* there growing, and doing damage there; *Therefore* he the ſaid *R.* well avoweth the taking of the ſaid cattle in the ſaid piece of ground in which, &c. and juſtly, &c. as a diſtreſs for the ſaid damage; and this he is ready to verify: Wherefore he prayeth judgment and a return of the ſaid cattle, together with his damages, &c. according to the form of the ſtatute in ſuch caſe lately made and provided, to be adjudged to him, &c.

Bar, right of common in the locus in quo, &c.

And the ſaid *S.* ſaith, that by reaſon of any thing above alledged by the ſaid *R.* he the ſaid *R.* ought not to avow the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt, becauſe he ſaith, that the ſaid place in which, &c. is and from time whereof the memory of man is not to the contrary, hath been parcel of certain grounds called the *Lord's Meadows* in *M.* aforeſaid; *and* that he the ſaid *S.* at the ſaid time when, &c. and long before was and ſtill is ſeiſed in his demeſne as of fee of 130 acres of land with the appurtenances in *M.* aforeſaid. And the ſaid *S.* and all thoſe whoſe eſtate he hath in his ſaid 130 acres of land with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed, and of right ought to have and uſe common of paſture

ſture in the ſaid piece of ground called the *Lord's Meadow*, whereof, *&c.* (his and their own land there excepted) for 37 of their commonable neat beaſts, couchant and levant on the ſaid 130 acres of land of the ſaid *S.* with the appurtenances every year on and from the 1ſt day of *Auguſt* until and upon the 11th day of *November* then next following, as belonging and appertaining to the ſaid 130 acres of land with the appurtenances: *And* therefore he the ſaid *S.* being ſo ſeiſed of his ſaid 130 acres of land with the appurtenances as aforeſaid, on the ſaid 2d day of *Auguſt* in which, *&c.* put the ſaid cattle in the ſaid declaration mentioned, being his own commonable neat beaſts, and couchant and levant on his ſaid 130 acres of land with the appurtenances, into the ſaid place in which, *&c.* parcel, *&c.* to uſe his ſaid common of paſture there, which ſaid cattle were there on that occaſion until the ſaid *R.* in his own wrong at the ſaid time when, *&c.* took the ſaid cattle in the ſaid place in which, *&c.* parcel, *&c.* and unjuſtly detained them againſt ſureties and pledges until, *&c.* as the ſaid *S.* hath above complained againſt him; and this he is ready to verify: *Wherefore* in as much as the ſaid *R.* hath above acknowledged the taking of the ſaid cattle in the ſaid place in which, *&c.* parcel, *&c.* he the ſaid *S.* prayeth judgment and his damages by reaſon of the taking and unjuſtly detaining thereof, to be adjudged to him, *&c.*

And

Replication. *And* the ſaid *R.* ſaith, that by reaſon of any thing above alledged by the ſaid plea in bar of the ſaid *S.* to the ſaid avowry of the ſaid *R.* he ought not to be barred from having his ſaid avowry, becauſe he ſays, that the ſaid cattle at the ſaid time when, *&c.* were in the ſaid place in which, *&c.* by the wrong of the ſaid *S.* eating the corn of the ſaid *R.* there growing, and doing damage there, as the ſaid *R.* hath by his ſaid avowry above alledged; *Traverſe.* *Without this*, that the ſaid *S.* and all thoſe whoſe eſtate he hath in the ſaid 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed, and of right ought to have and uſe common of paſture in the ſaid piece of ground called the *Lord's Meadows*, whereof, *&c.* (his and their own land there excepted) for 37 of their commonable neat beaſts couchant and levant on the ſaid 130 acres of land of the ſaid *S.* with the appurtenances, every year on and from the 1ſt day of *Auguſt* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the ſaid 130 acres of land with the appurtenances, in manner and form as the ſaid *S.* hath by his ſaid plea in bar to the ſaid avowry in that reſpect above alledged; and this he is ready to verify: *Wherefore*, as before, he prayeth judgment and a return of the ſaid cattle together with his damages, *&c.* according to the form of the ſtatute in ſuch ca

aſe lately made and provided, to be adjudged to him, *&c.*

And the ſaid *S.* ſaith, as before, that the ſaid *S.* and all thoſe whoſe eſtate he hath in the ſaid 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed, and of right ought to have and uſe common of paſture in the ſaid piece of ground called the *Lord's Meadows*, *&c.* (his and their own land there excepted) for 37 of their commonable neat beaſts, couchant and levant on the ſaid 130 acres of land of the ſaid *S.* with the appurtenances, every year on and from the 1ſt day of *Auguſt* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the ſaid 130 acres of land with the appurtenances in manner and form as the ſaid *S.* hath by his ſaid plea in bar to the ſaid avowry in that reſpect above alledged; and this he prayeth may be inquired of by the country; *and* the ſaid *R.* doth ſo likewiſe. *Therefore* the ſheriff is commanded that he cauſe to come here in 8 days of the Purification of the bleſſed Virgin *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Rejoinder.

Iſſue.

Venire.

Hil. 36 *H.* 6. *ro.* 466.

Surrey, to wit, Heretofore, as appeareth in the term of St. *Michael* in the 35th year of the reign of our lord the preſent king in the

Declaration in replevin. Hob. 16.

the 241 roll it is ſo contained, *J. A.* wa ſummoned to anſwer *J. D.* of a plea where fore he took the cattle of the ſaid *J. D.* and unjuſtly detained them againſt gages and pledges, *&c.* And whereupon the ſaid *J D.* in his proper perſon complaineth, tha the ſaid *J. A.* on the laſt day of *June* in th 34th year of the reign of our ſaid lord th preſent king at *T. in a certain place called* &c. took the cattle, *to wit*, three cows and four bullocks of the ſaid *J. D.* and unjuſtl detained them againſt gages and pledges until, *&c.* Whereupon he ſaith he is injure and hath damage to the value of 16*l.* an thereupon bringeth ſuit, *&c.* and the ſai *J. A.* by *W. T.* his attorney cometh and de fendeth the force and injury when, *&c.* An prayeth leave of imparling thereupon here until from the day of St. *Hilary* in 15 days and hath, *&c.* By the aſſent of the ſaid *J D.* the ſame day is given to him the ſaid *J D.* and here, *&c.*

Imparlance.

And now here at this ſame 15th day o St. *Hilary* cometh as well the ſaid *J. D.* i his proper perſon, as the ſaid *J. A.* by h attorney aforeſaid: Whereupon the ſaid pl being ſeen, read and underſtood, *&c.* b the juſtices here, *becauſe in the ſaid declara tion there was no mention in what place th ſaid cattle were taken*, it ſeemeth to the ſai juſtices, that a due avowry being firſt mad by the ſaid *J. A.* for having a return of th ſaid cattle, then the ſaid *J.* for the inſuffi ciency of the ſaid declaration, ought to ha a return of the ſaid cattle, *&c.* And upo th

Judgment for a Return. habend. *becauſe no mention in the declaration in what place the cattle were taken.*

Avowry pro return. habend.

his the said *J. A.* for having a return of the aid cattle, well avoweth the taking the said attle in the town aforesaid, in a certain place alled the *Vicar's Land*; and justly, *&c.* beause he saith, that one *J. C.* vicar of the hurch of St. *M.* in *T.* long before the time n which the said taking is supposed to be one, was seised of two acres of land with he appurtenances in *T.* aforesaid, whereof he said place, in which, *&c.* is parcel, as glebe of the said church, in his demesne as of ee, in right of the said church, and being o seised thereof long before the taking, *&c.* demised to the said *W. A.* the said two acres f land, to have from the same day by five ears thence next following [which *W.* demised over to the defendant, and so avows or damage-feasant] and prayeth a return f the said cattle, *&c.* Therefore it is granted that the said *J. A.* have a return of the aid cattle, *&c.* And the said *J. D.* in mercy, *&c.*

In the County Court of Middlesex *held the 2d day of* August *in the* 18*th year of King* George *the Second.*

In the county court of Mid. *to wit.* } *J. F.* was summoned to answer to *J. C.* in a plea wherefore he took the goods and chattels of the said *J. C.* and them unjustly detained against sureties and pledges, *&c.* Whereupon the said *J. C.* by *S. T.* his attorney complaineth, that the said *J. F.* on the third day of *July* in the 18th year of the reign

Decl. in replevin in the county court. Co. Ent. 314. b.

reign of our ſovereign lord *George* the 2d now king of *Great Britain*, at the pariſh o *St. Giles in the Fields* in the ſaid county o *Middleſex*, at a certain place there called an known by the name of *Little St. Andrew ſtreet* in the county aforeſaid, in a certai meſuage ſituate in the ſaid ſtreet and then i the poſſeſſion of the ſaid *J. C.* and withi the juriſdiction of this court, did take th goods and chattels of the ſaid *J. C.* that i to ſay, two looking-glaſſes in gilt frame two braſs arms and ſix chairs, and them un juſtly detained againſt ſureties and pledge *&c.* Wherefore the ſaid *J. C.* ſaith that h is injured and hath received damage to th value of * 10 *l.* and thereof he bringet this ſuit, *&c.*

Pledges for proſecuting { *John Doe*, and *Richard Roe.*

Decl. in replevin. C. B.

London, *to wit*, *J. S.* late, *&c.* was ſum moned to anſwer to *B. B.* of a plea why h took the goods and chattels of the ſaid *J* and them unjuſtly detained againſt ſuretie and pledges, until, *&c.* *And* whereupo the ſaid *B.* by *W. S.* his attorney complain eth, *that* the ſaid *J.* the 29th day of *Augu* in the 7th year of the reign of our lord th king, who now is, *&c.* at *L.* aforeſaid, tha

* *N. B.* In replevin by plaint, the ſheriff may ho plea in his county court, although the value be of 20 or above, by force of the ſtatute of *Marlebridge*. 2 In 139, 312.

is to say, in the parish of *Christ-Church* in the ward of *Farringdon-Within*, in a certain place there called the kitchen, part of the dwelling-house of the said *B.* in the parish and ward aforesaid, took the goods and chattels, that is to say, two watches of the said *B.* and them unjustly detained against sureties and pledges until, *&c.* Whereupon he saith, that he is damnified and hath sustained damages to the value of 40 *l.* and thereof he bringeth this suit, *&c.*

And the said *J. C.* by *S. L.* his attorney cometh and defendeth the force and injury when, *&c.* and as bailiff of *T. D.* well acknowledgeth the taking of the said goods, chattels and cattle in the said places in which, *&c.* and justly, *&c.* because he saith that *J. F.* long before the said time when, *&c.* was seised of the said places in which, *&c.* with the appurtenances, in his demesne as of fee, and being so seised thereof, he the said *J. F.* by an indenture made at the parish of *Kingsnorton* aforesaid, on the 30th day of *August* in the 15th year of the reign of the late king *Charles* I. between the said *J. F.* of the one part, and *W. L.* and *M.* his wife, by the name of *M. F.* daughter of the said *J. F.* of the other part, one part of which said indenture, sealed with the seal of the said *J. F.* the said *J. C.* bringeth here into court, bearing date the same day and year, for and in consideration of the marriage then had between the said *W.* and *M.* and to and for some maintenance and livelihood to be provided and assured to and for the said *W.* and

Cognizance as bailiff.

J. F. *seised in fee.*

By indenture.

Profert.

and *M.* by the ſaid *J. F.* in ſatisfaction of part of the marriage portion of the ſaid *M.* did for himſelf and his heirs give and grant to the ſaid *W. L.* and *M.* his wife, one annual or yearly rent of 4 *l.* of lawful money of *England*, yearly iſſuing, payable, and going forth of the ſaid places in which, *&c.* (among other things) To have, hold, receive, take and enjoy the ſaid annual or yearly rent of 4 *l.* of lawful money of *England*, unto the aforeſaid *W. L.* and *M.* his wife, and the heirs of the body of the ſaid *M.* by the ſaid *W. L.* lawfully to be begotten for ever, to be paid at the feaſts of St. *Michael* the archangel, and the annunciation of the bleſſed virgin St. *Mary*, by even portions. And the ſaid *J. F.* did grant for himſelf and his heirs, by the ſaid indenture, that if it ſhould happen that the ſaid annual rent of 4 *l.* or any part thereof, to be in arrear and unpaid by the ſpace of 21 days next after any of the ſaid feaſts (being lawfully demanded) then it ſhould be lawful for the ſaid *W. L.* and *M.* and either of them, and the heirs of the body of the ſaid *M.* by the ſaid *W. L.* lawfully begotten, and every of them, into the ſaid places in which, *&c.* (among other lands) and every part and parcel thereof to enter and diſtrain, and the diſtreſs and diſtreſſes then and there found to lead, drive, chaſe, and carry away, and the ſame to impound, withhold, detain and keep until the ſame annual rent of 4 *l.* and every part thereof, with the arrearages, be fully ſatisfied and paid, as by the ſaid indenture more fully appeareth.

Grants a yearly rent,

iſſuing out of the locus in quo, *&c.*

To W. L. *and* M. *his wife, and the heirs of the body of* M. *to be begotten by* W.

With power of diſtreſs.

appeareth. By virtue of which ſaid grant thereof they the ſaid *W. L.* and *M.* his wife became ſeiſed of the ſaid yearly rent of 4 *l.* in their demeſne as of fee-tail, to wit, to them and the heirs of the body of the ſaid *M.* by the ſaid *W. L.* And being ſo ſeiſed thereof, he the ſaid *W. L.* afterwards, to wit, on the 1ſt day of *June* in the year of our Lord 1681, at the pariſh of *Kingſnorton* aforeſaid died, leaving iſſue of his body, on the body of the ſaid *M.* his wife begotten, *M. L.* their daughter, and no other iſſue; and the ſaid *M.* ſurvived him, and became ſole ſeiſed of the ſaid yearly rent, for and during the term of her natural life, the remainder thereof belonging to the ſaid *M.* and the heirs of her body. And being ſo ſeiſed thereof ſhe, the ſaid *M.* afterwards, to wit, on the 1ſt day of *May* in the year of our Lord 1695, at the pariſh of *Kingſnorton* aforeſaid died ſeiſed of her ſaid eſtate therein. Upon whoſe death the ſaid *M.* her only daughter and heir, became ſeiſed of the ſaid yearly rent of 4 *l.* in her demeſne as of fee-tail, to wit, to her and the heirs of her body. And being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, to wit, on the 15th day of *June* in the year of our Lord 1690, at the ſame pariſh took to her huſband *E. J.* by reaſon whereof they the ſaid *E. J.* and *M.* his wife, in the right of the ſaid *M.* became ſeiſed of the ſaid yearly rent of 4 *l.* in their demeſne as of fee-tail, to wit, to them and the heirs of the body of the ſaid *M.* *And* being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, to wit,

W. L. *and* M. *his wife, ſeiſed of the rent in fee-tail.*

W. L. *and* M. *leave iſſue only* M. *their daughter.*

M. *the daughter ſeiſed of the rent in tail.*

Marries E. J.

Leaves iſſue M. *her daughter.*

wit, on the firſt day of *June* in the year of our Lord 1703, at the ſame pariſh died, leaving iſſue of her body by the ſaid *E. M. J.* her daughter and heir, and ſo ſeiſed of her ſaid eſtate in the ſaid yearly rent of 4*l.* *Upon* whoſe death the ſaid *E. J.* became ſeiſed of the ſaid yearly rent of 4*l.* in his demeſne as of free-hold, for the term of his life, as tenant thereof by the law of *England*; and afterwards, to wit, on the 10th day of *October* 1706, at the pariſh of *Kingſnorton* aforeſaid the ſaid *E.* died. Upon whoſe death the ſaid *M. J.* her daughter and ſole heir, became ſeiſed of the ſaid yearly rent of 4*l.* in her demeſne as of fee-tail, to wit, to her and the heirs of her body. *And* being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, to wit, on the 20th day of *October* in the year laſt aforeſaid, at the ſame pariſh took to her huſband *J. D.* And thereupon the ſaid *J. D.* and *M.* his wife, in right of the ſame *M.* became ſeiſed of the ſaid yearly rent of 4*l.* in their demeſne as of fee-tail, to wit, to them and the heirs of the body of the ſaid *M.* And being ſo ſeiſed thereof, he the ſaid *J. D.* afterwards, to wit, on the 1ſt day of *April* in the year of our Lord 1709, at the ſame pariſh died, and the ſame *M.* his wife ſurvived him, and became ſole ſeiſed of the ſaid yearly rent of 4*l.* in her demeſne as of fee-tail, to wit, to her and the heirs of her body. *And* being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, to wit, on the 1ſt day of *September* in the ſame year, at the ſame pariſh took to her huſband *W. B.*

E. S. becomes tenant by the curteſy and dies M the daughter becomes ſeiſed, &c.

Marries J. D.

Who dies.

She marries W. B.

Whereupon

Whereupon they the ſaid *W. B.* and *M.* his wife became ſeiſed in the right of the ſaid *M.* of the ſaid yearly rent of 4*l.* in their demeſne as of fee-tail, to wit, to them and the heirs of the body of the ſaid *M.* being ſo ſeiſed thereof, afterwards, to wit, in the term of St. *Hilary* the 8th year of the reign of the late queen *Anne*, a certain fine was levied in the court of the ſaid late queen of the bench here, to wit, at *Weſtminſter*, before *T. T. J. B. R. F.* and *R. D.* then juſtices and other faithful ſubjects of the ſaid late queen then and there preſent, between *S. P.* ſpinſter plaintiff, and the ſaid *W. B.* and *M.* his wife deforceants, of the ſaid yearly rent of 4*l.* by the name of the annual rent of 80*s.* iſſuing of and from one meſuage, 20 acres of land, 10 acres of meadow, and 20 acres of paſture, with the appurtenances in *Kingſnorton* aforeſaid. Whereupon a certain plea of covenant was ſummoned between them in the ſame court, to wit, that the ſaid *W.* and *M.* acknowledged the ſaid rent to belong to her the ſaid *S.* as that which the ſaid *S.* had of the gift of the ſaid *W.* and *M.* and they remiſed and quit-claimed the ſame from the ſaid *W.* and *M.* and their heirs, to the ſaid *S.* and her heirs for ever. And moreover the ſaid *W.* for himſelf and his heirs, did grant that he would warrant to the ſaid *S.* and her heirs, the ſaid rent againſt the ſaid *W.* and his heirs for ever. And likewiſe the ſaid *W.* and *M.* acknowledged for themſelves and the heirs of the ſaid *M.* that they would warrant to the

A fine levied.

Between S. P. *plaintiff and the ſaid* W. B. *and* M. *Deforceants.*

ſaid *S.* and her heirs the ſaid rent againſt the ſaid *W.* and *M.* and the heirs of the ſaid *M.* for ever. And for this acknowledgment, remiſſion, quit-claim, warrant, fine, and concord, the ſame *S.* did give to the ſaid *W.* and *M.* 60 *l.* ſterling; as by the record of the ſaid fine remaining in the court of our lord the now king of the bench here, to wit, at *Weſtminſter* aforeſaid, manifeſtly appeareth.

The fine levied to the uſe of the ſaid S. P. *in fee.*

Which ſaid fine, ſo had and levied as aforeſaid, was had and levied to and for the only proper uſe and behoof of the ſaid *S.* her heirs and aſſigns for ever.

S. P. *ſeiſed in fee.*

Whereupon the ſaid *S.* became ſeiſed of the ſame yearly rent of 4 *l.* in her demeſne as of fee; *and* being ſo ſeiſed thereof, ſhe the ſaid *S.* afterwards, to wit, on the 11th day of *February* in the year of our Lord 1730, at the pariſh of *Kingſnorton* aforeſaid made her laſt will and teſtament in writing, and thereby gave and deviſed the ſaid yearly rent of 4 *l.* to *H. D.* and his heirs for ever.

Who by will deviſes it to H. D. *in fee.*

And afterwards, to wit, on the ſame day and year, at the ſame pariſh, ſhe, the ſaid *S.* died ſo ſeiſed of her ſaid eſtate therein.

H. D. *ſeiſed of the rent in fee.*

Upon whoſe death the ſaid *H.* became ſeiſed of the ſaid yearly rent of 4 *l.* in his demeſne as of fee, by virtue of the ſaid deviſe thereof; and being ſo ſeiſed thereof, he the ſaid *H.* afterwards, to wit, on the firſt day of *March* in the year of our Lord 1735, at the ſame pariſh died ſeiſed of the ſaid yearly rent of 4 *l.* in his demeſne as of fee.

It deſcends to T. D. *as his heir.*

Upon whoſe death the ſaid yearly rent of 4 *l.* deſcended to the ſaid *T. D.* his brother and heir. *By* virtue of which ſaid deſcent

ſcent thereof, he the ſaid *T. D.* became ſeiſed, and ſtill is ſeiſed of the ſaid yearly rent of 4 *l.* in his demeſne as of fee. *And* becauſe 10 *l.* of the ſaid yearly rent for two years and a half, ending on the feaſt of the annunciation of the bleſſed virgin *Mary* in the year of our Lord 1742, on that feaſt were due and in arrear to the ſaid *T. D.* and (although lawfully demanded) at the ſaid time when, *&c.* being after the end of 21 days next after that feaſt, remained in arrear and unpaid; therefore the ſaid *J. C.* as bailiff of the ſaid *T. D.* well acknowledgeth the taking of the ſaid goods, cattle and chattels, in the ſaid places in which, *&c.* and juſtly, *&c.* as a diſtreſs for the ſaid arrears of the ſaid yearly rent; and this he is ready to verify: Wherefore he prayeth judgment, and a return of the ſaid goods, cattle and chattels, together with his damages, *&c.* according to the form of the ſtatute in ſuch caſe lately made and provided, to be adjudged to him, *&c.*

T. D. *ſeiſed in fee.*

For rent arrear makes cognizance as bailiff of the ſaid T. D.

And the ſaid *J. L.* ſaith, that the ſaid *J. C.* for any thing by him above alledged in pleading, as bailiff of the ſaid *T. D.* ought not to acknowledge the ſaid taking the ſaid goods, cattle and chattels in the ſaid places in which, *&c.* to be juſt, becauſe he ſaith, that the ſaid fine ſo had and levied as aforeſaid was had and levied to and for the only proper uſe and behoof of the ſaid *M. B.* and her heirs; *Without this*, that the ſaid fine ſo had and levied as aforeſaid was had and levied to and for the only proper uſe and behoof of the ſaid *S. P.* her heirs and

Bar, that the fine was levied to the uſe of M. B.

Traverſe.

and aſſigns, as the ſaid *J. C.* by his ſaid cognizance hath above alledged; and this the ſaid *J. L.* is ready to verify: Whereupon ſince the ſaid *J. C.* above acknowledgeth the ſaid taking of the ſaid goods, cattle and chattels, the ſaid *J. L.* prayeth judgment, and his damages on occaſion of the ſaid taking and unjuſt detention of the ſaid goods, cattle and chattels, to be adjudged to him, *&c.*

Replication. And the ſaid *J. C.* ſaith, as before, that the ſaid fine ſo had and levied as aforeſaid, was had and levied to and for the only uſe and behoof of the ſaid *S. P.* her heirs and aſſigns, as the ſaid *J. C.* by his cognizance has above alledged; and hereupon he putteth himſelf upon the country; *and* the ſaid *J. L.* doth ſo likewiſe: *Therefore* the ſheriff is commanded that he cauſe to come here in three weeks from the day of the holy *Trinity*, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Iſſue. Venire *awarded.*

Avowry by a church warden, in the name of a diſtreſs on the Stat. 43 Eliz.

And the ſaid *J. S.* by *J. B.* his attorney cometh and defendeth the force and injury, when, *&c.* and as church-warden of the ſaid pariſh of *Chriſt-Chriſt* in the ward aforeſaid, according to the form of the ſtatute, *&c.* well avoweth the taking of the ſaid goods and chattels in the ſaid place in which, *&c.* becauſe he ſaith, that at the ſaid time when, *&c.* he the ſaid *J. S.* was church-warden of the ſaid pariſh of *Chriſt-Church* in the ward aforeſaid; and that he the ſaid *J. S.* as church-warden as aforeſaid at the time, *&c.*

took

took the ſaid goods and chattels in the ſaid place in which, &c. in the name of a diſtreſs, by authority and according to the tenor, purport and effect of a certain ſtatute, made in a parliament of our late ſovereign lady *Elizabeth*, queen of *England*, &c. holden at *Weſtminſter* in the county of *Middleſex*, in the 43d year of her reign, and as churchwarden, &c. by virtue of the ſaid ſtatute well avoweth the ſaid taking, &c. in the name of a diſtreſs, and juſtly, &c. and this he is ready to verify: Wherefore he prayeth judgment, and that a return of the ſaid goods and chattels, together with his damages, according to the ſtatute, may be adjudged to him, &c.

And the ſaid *B.* ſaith, that the ſaid *J. S.* for the reaſon before alledged, ought not to well avow the taking the ſaid goods and chattels in the ſaid place in which, &c. becauſe he ſaith that the ſaid *J. S.* of his own proper injury, and without any ſuch cauſe by him above mentioned in his avowry, took the ſaid goods and chattels of him the ſaid *B.* in the ſaid place in which, &c. and them unjuſtly detained againſt ſureties and pledges, &c. in the manner and form as he the ſaid *B.* above againſt him complaineth; and he demands that this may be inquired of by the country: *And* the ſaid *J. S.* doth the like. *Replication.*

GEORGE the Second, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. To the ſheriff of *Middleſex* greeting. If *J. F.* ſhall *Writ of falſe judgment.*

give you ſecurity that his ſuit ſhall be proſecuted, then in your full county cauſe the plaint to be recorded which is in the ſame county, without our writ, between *J. C.* and *J. F.* of the goods and chattels of the ſaid *J. C.* taken and unjuſtly detained, as it is ſaid, wherein the ſaid *J. F.* complaineth that falſe judgment hath been given againſt him in the ſaid county, and that you have the ſaid record before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, under your ſeal and the ſeals of four lawful knights of the ſame county, of ſuch as ſhall be preſent at the ſaid record, and ſummon by good ſummoners the ſaid *J. C.* that he be then there to hear the ſaid record; and have you there the ſummons, the names of the ſaid four knights, and this writ. Witneſs ourſelf at *Weſtminſter*, the 17th day of *December* in the 18th year of our reign.

	s.	*d.*
Curſitor	2	6
Duty	1	6
Fine	6	8
	10	8

Burgh.

By the Lord Chancellor of *Great Britain*, at the inſtance of the demandant.

s. *d.*
Received vi. viii.
S. Hetherington.

Scire

Scire facias.

Cooke.

Trinity *Term in the* 10*th year of king* George *the Second.*

London, *to wit.* } IT was commanded to the ſheriffs of *London*, *Whereas T. M.* lately in the court of the lord *James* II. late king of *England*, (that is to ſay) in the term of the holy *Trinity* in the 2d year of his reign, before Sir *H. B.* knt. and his companions, then juſtices of the ſaid late king of the common bench at *Weſtminſter*, by the judgment of the ſame court had recovered againſt *T. T.* late of the pariſh of *St. Andrew Holborn* in the county of *Middleſex*, eſq; as well a debt of 500*l.* as 90*s.* which were adjudged in the ſame court to the ſaid *T. M.* for his damages which he had ſuſtained by reaſon of the detaining of that debt, whereof he is convicted, as by the record and proceedings thereof now remaining in the ſaid court of our preſent ſovereign lord the king, before his juſtices at *Weſtminſter* aforeſaid, manifeſtly appeareth: Nevertheleſs execution of the judgment aforeſaid ſtill remaineth to be made; and as well the ſaid *T. M.* as the ſaid *T. T.* are dead ſince the recovering the ſaid judgment, as our ſaid preſent ſovereign lord the king hath received information by *W. S.* adminiſtrator of the goods and chattels which were of the ſaid *T. M.* at the time of his death not adminiſtered by *A.* late wife of

Scire facias *by an adminiſtrator* de bonis *againſt heir at law and tertenants.*

of him the ſaid *W. S.* deceaſed, and *T. M.* her ſiſter alſo deceaſed, late executrixes of the teſtament of the ſaid *T. M.* And his ſaid now majeſty being willing, *&c.* that by good and lawful men they ſhould warn *W. T.* couſin and beir of the ſaid *T. T.* deceaſed, and the tenants of all the lands and tenements which were of the ſaid *T. T.* on the morrow of the holy *Trinity* in the ſaid 2d year of the ſaid late King *James* II. (on which day the judgment aforeſaid was given) or at any time afterwards, in their bailiwic, that they ſhould be here at this day (that is to ſay) from the day of St. *Michael* in three weeks, to ſhew if they have or know of any thing, *&c.* why the ſaid *W. S.* ſhould not have execution of the debt and damages aforeſaid, to be levied of thoſe lands and tenements, according to the form and effect of the recovery aforeſaid, *&c.* if, *&c.* And now here at this day cometh as well the ſaid *W. S.* by *T. B.* his attorney, as *J. T.* eſq; by *C. W.* his attorney; and the ſaid *W. T.* although on the fourth day of the plea aforeſaid he was ſolemnly demanded, came not; and the

The return. ſheriffs, *to wit*, *W. R.* and *B. R.* eſqs. now return, that by virtue of the ſaid writ to them directed, by *J. C.* and *R. R.* good and lawful men of their bailiwic, they had warned the ſaid *W. T.* couſin and heir of the ſaid *T. T.* and the ſaid *J. T.* eſq; the tenant of 18 meſuages with the appurtenances in the pariſh of *St. Andrew Holborn* in their bailiwic *(to wit)* one of them with the appurtenances then or late in the tenure or occupa-

tion

tion of *E. M.* or her aſſigns [*the other 17 meſuages deſcribed in like manner*] which were the lands and tenements of the ſaid *T. T.* on the day of giving the judgment aforeſaid, that they be here on this day *(to wit)* from the day of St. *Michael* in three weeks, to ſhew as the writ doth require; and the ſaid ſheriffs did certify that there were no other tenants, nor was there any other tenant of any other lands or tenements which were his the ſaid *T. T.*'s on the day of giving the judgment aforeſaid, or at any time after, in their bailiwic, whom they could warn: And hereupon the ſaid *W. S.* ſaith, that adminiſtration of all the goods and chattels which were of the ſaid *T. M.* at the time of his death not adminiſtered by the ſaid *A.* deceaſed, late wife of the ſaid *W. S.* and the ſaid *T. M.* deceaſed, the executrixes of the teſtament of the ſaid *T. M.* after the deaths of the ſaid *A.* and *T. (to wit)* on the 9th day of *Auguſt* in the 10th year of the reign of our late ſovereign lord king *George* I. at *London*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was committed by *W.* by divine providence archbiſhop of *C.* primate of all *England* and metropolitan, to him the ſaid *W. S.* and he produceth here in court the letters of adminiſtration of the ſaid archbiſhop, with the teſtament of the ſaid *T. M.* annexed, which teſtifieth the commitment of the adminiſtration aforeſaid to him in form aforeſaid, and he prayeth execution of the debt and damages aforeſaid againſt the ſaid *W. T.* to be levied of the lands and tenements

Letters of adminiſtration.

Profert.

nements which were of the ſaid *T. T.*'s at the aforeſaid time of giving the judgment aforeſaid, or at any time ſince, and which deſcended from the ſaid *T. T.* to the ſaid *W. T.* as his couſin and heir, by his default, and alſo againſt the ſaid *T. T.* to be levied of the meſuages aforeſaid, with the appurtenances, whereof he is returned tenant as aforeſaid, to be adjudged to him the ſaid *W. S.*

Double plea of tertenant,

And the ſaid *J. T.* by *C. W.* his attorney cometh and ſaith, that the ſaid *W. S.* ought not to have execution of the debt and damages aforeſaid, againſt him the ſaid *J. T.* to be levied of the tenements aforeſaid, of which he is above returned tenant, becauſe he ſaith that all the money due upon the ſaid judgment in the ſaid writ mentioned was paid and ſatisfied by the ſaid *T. T.* to the ſaid *T. M.* in the ſame writ named, *to wit*, at *London*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*; and this he is ready to verify: Wherefore he prayeth judgment if the ſaid *W. S.* ought to have execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the tenements aforeſaid, of which he is above returned tenant; and the ſaid *J. T.* by force of the ſtatute in that caſe made and provided, and by leave of the court here granted to him, for a further plea ſaith, that the ſaid *W. S.* ought not to have execution of the debt and damages aforeſaid againſt the ſaid *J. T.* to be levied of the tenements aforeſaid, of which he is above returned tenant as aforeſaid, becauſe he ſaith, that the ſaid *T. T.*

That the money on the judgment was paid.

And that the deft. in the original judgment was not ſeiſed in fee of the meſuage, &c. in the writ of Scire facias.

T. T. on the day when the ſaid judgment in the ſaid writ named was given, or ever after, was not ſeiſed of the tenements aforeſaid, of which the ſaid *J. T.* is above returned tenant, or of any part thereof, in his demeſne as of fee; and this he is ready to verify: Wherefore he prayeth judgment if the ſaid *W. S.* ought to have execution againſt him of the debt and damages aforeſaid, to be levied of the ſaid tenements, of which he is above returned tenant as aforeſaid, *&c.*

G. Eyre.

Replication,

And the ſaid *W. S.* ſaith, that he by any thing by the ſaid *J. T.* above in pleading alledged ought not to be barred from having execution of the debt and damages aforeſaid againſt the ſaid *J. T.* to be levied of the tenements aforeſaid, with the appurtenances, of which he is returned tenant as aforeſaid; becauſe as to the plea of the ſaid *J. T.* firſt above pleaded, he the ſaid *W. S.* ſaith, that all the money due upon the ſaid judgment in the ſaid writ mentioned was not paid or ſatisfied by the ſaid *T. T.* to the ſaid *T. M.* in the ſaid writ named, as the ſaid *J. T.* hath above in pleading alledged; and this he prayeth may be inquired by the country; and the ſaid *J. T.* doth likewiſe the ſame. *Iſſue thereon.* And as to the plea of the ſaid *J. T.* laſt above pleaded, he the ſaid *W. S.* ſaith, that before the ſaid day when the ſaid judgment was given, *to wit*, on the 10th day of *January* in the year of our Lord 1685. the ſaid *T. T.* was ſeiſed of the tenements aforeſaid

To the firſt part, that the money was not paid.

To the ſecond part,

That the defendant in the judgment was ſeiſed in fee.

ſaid with the appurtenances, of which the ſaid *J. T.* is above returned tenant, in his demeſne as of fee; and being ſo ſeiſed on the 1ſt day of *April* in the 2d year of the reign of our Lord *James* II. late king of *England*, *&c.* by one indenture made at the pariſh of St. *Andrew Holborn* aforeſaid, between the ſaid *T. T.* eſq; *R. A. T. A. E. C.* and *T. T.* gent. by their reſpective names of *T. T.* of the pariſh of St. *Andrew Holborn*, *London*, eſq; *R. A.* of *Newport Pagnel* in the county of *Bucks*, eſq; *T. A.* of *Bedwell Park* in the county of *Hertford*, eſq; *E. C.* of *Gray's Inn* in the county of *Middleſex*, eſq; and *T. T.* of the pariſh of St. *Andrew Holborn*, *London*, gent. and *E. B.* and *J. W.* by their reſpective names of *E. B.* of *Lincoln's Inn* in the county of *Middleſex*, eſq; and *J. W.* of *Gray's Inn* aforeſaid, of the other part, one part of which indenture ſealed with the ſeals of the ſaid *T. T.* eſq; *R. A. T. A. F. C.* and *T. T.* gent. he the ſaid *W. S.* bringeth here into court, the date whereof is the ſame day and year laſt above mentioned, he the ſaid *T. T.* eſq; for and in conſideration of a certain ſum of money to him the ſaid *T. T.* eſq; by the ſaid *E. B.* and *J. W.* in hand paid, did bargain and ſell, and they the ſaid *R. A. T. A. E. C.* and *T. T.* gent. did ratify and confirm the tenements aforeſaid, whereof the ſaid *J. T.* is returned tenant as aforeſaid with the appurtenances, together with other lands, unto the ſaid *E. B.* and *J. W.* To have and to hold unto the ſaid *E. B.* and *J. W.* their executors, adminiſtrators and aſſigns,

And did by leaſe,

Profert.

aſſigns, from the day next before the day of the date of the ſaid indenture unto the end and term of one year then next following and fully to be complete and ended, as by the ſaid indenture more fully doth appear: By virtue of which bargain and ſale, and by force of the ſtatute for transferring of uſes into poſſeſſion made at *Weſtminſter* in the county of *Middleſex*, on the 4th day of *February* in the 27th year of the reign of the lord *Henry* VIII. late king of *England*, *&c.* the ſaid *E.* and *B.* and *J. W.* were poſſeſſed of the tenements aforeſaid, whereof the ſaid *J. T.* is ſo returned tenant, with the appurtenances, for the ſaid term of one year. And the ſaid *E. B.* and *J. W.* being ſo poſſeſſed thereof, and the ſaid *T. T.* eſq; being ſo ſeiſed of the reverſion thereof in his demeſne as of fee, afterwards, *to wit*, on the 2d day of *April* in the 2d year of the reign of the ſaid lord *James* II. late king of *England*, *&c.* by one indenture *quadripartite* made at the ſaid pariſh of St. *Andrew Holborn*, between the ſaid *T. T.* eſq; *R. A. T. A. E. C.* and *T. T.* gent. by their reſpective names of *T. T.* of the pariſh of St. *Andrew Holborn*, *London*, eſq; *R. A.* of *Newport Pagnel* in the county of *Bucks*, *T. A.* of *Bedwel Park* in the county of *Hertford*, eſq; *E. C.* of *Gray's Inn* in the county of *Middleſex*, eſq; and *T. T.* of the pariſh of St. *Andrew Holborn*, *London*, gent. of the firſt part, the ſaid *E. B.* and *J. W.* by their reſpective names of *E. B.* of *Lincoln's Inn* in the county of *Middleſex*, eſq; and *J. W.* of *Gray's Inn* aforeſaid, eſq; of

And releaſe,

of the ſecond part, *E. F.* and *G. L.* by their reſpective names of *E. F.* of *Gray's Inn* aforeſaid, eſq; and *G. L.* of the *Inner Temple, London*, eſq; of the third part, and *W. F.* by the name of *W. F.* of *Hatton Garden* in the ſaid county of *Middleſex*, eſq; of the fourth part, one part of which indenture ſealed with the ſeals of the ſaid *T. T.* eſq; *R. A. T. A. E. C.* and *T. T.* gent. he the ſaid *W. S.* bringeth here into court, the date whereof is the ſame day and year laſt above mentioned, he the ſaid *T. T.* eſq; did grant, and they the ſaid *R. A. T. A. E. C.* and *T. T.* gent. the reverſion of the tenements aforeſaid, whereof the ſaid *J. T.* is ſo returned tenant, with the appurtenances, together with other lands, to the ſaid *E. B.* and *J. W.* and their heirs: To have and to hold unto the ſaid *E. B.* and *J.* their heirs and aſſigns for ever, to the uſe of them, their heirs and aſſigns for ever; To the intent they might become perfect tenants of the freehold of the tenements aforeſaid, in order and to the intent that a common recovery thereof might be had and ſuffered in manner and form in the ſame indenture ſpecified: And it was declared by the ſame indenture, that the ſaid recovery ſo to be had and ſuffered, and all and every other recovery or recoveries, conveyances and aſſurances whatſoever before that time had, levied, ſuffered or executed, or thereafter to be had, levied, ſuffered or executed of the tenements aforeſaid, whereof the ſaid *J. T.* is returned tenant, with the appurtenances, or any of them,

Profert.

Convey.

To make a tenant to the Præcipe, *in order to ſuffer a common recovery.*

The uſes thereof declared.

them, by or between the ſaid parties to the ſame indenture or any of them, ſhould be and enure, and are by the ſame indenture declared to be and enure to the uſe of Sir *R. A.* and *J. B.* of the county of *Cambridge*, eſq; and their heirs, during the joint lives of the ſaid *T. T.* eſq; and *E.* his wife, and from and after the determination of that eſtate, to the uſe of the ſaid Sir *R. A.* and *J. B.* and their heirs, for and during the lives of the ſaid *T. T.* eſq; and *E.* his wife, and the life of the longer liver of them, and from and after the deceaſe of the ſaid *T. T.* eſq; and *E.* his wife, and of the ſurvivor of them, that then they the ſaid *R. A.* and *J. B.* and their heirs and aſſigns ſhould ſtand and be ſeiſed of the tenements aforeſaid with the appurtenances, to the uſe of the firſt ſon of the body of the ſaid *T. T.* eſq; on the body of the ſaid *E.* begotten, and of the heirs male of the body of ſuch firſt ſon iſſuing; and for default of ſuch iſſue, then to the uſe of the ſecond, third, fourth, fifth, ſixth, ſeventh, and all and every other ſon and ſons of the body of the ſaid *T. T.* eſq; on the body of the ſaid *E.* begotten, ſeverally, ſucceſſively, and in remainder, one after another, as they ſhould be in priority of birth, and of the heirs male of the body and bodies of every ſuch ſon and ſons iſſuing; the elder of ſuch ſons and the heirs male of his body iſſuing to take before the younger of ſuch ſons and the heirs male of his body iſſuing; and for default of ſuch iſſue, to the uſe of the ſaid Sir *R. A.* and *J. B.* their executors,

adminiſtrators and aſſigns for the term of 500 years, without impeachment of waſte, in which indenture is contained a proviſo, that if the ſaid *T. T.* eſq; ſhould happen to die without any iſſue female of his body on the body of the ſaid *E.* begotten, or without leaving the ſaid *E.* with child of one or more daughter or daughters that ſhould be born alive; that then the eſtate ſo limited to the ſaid Sir *R. A.* and *J. B.* for 500 years, ſhould ceaſe, determine, and be utterly void, as by the ſaid indenture, amongſt other things, more fully doth appear. By virtue whereof the ſaid *E. B.* and *J. W.* were ſeiſed of the tenements aforeſaid, whereof the ſaid *J. T.* is ſo returned tenant, with the appurtenances, in their demeſne as of fee; and being ſo ſeiſed, afterwards purſuant to the ſaid indenture quadripartite, *to wit*, on the 12th day of *February* in the 2d year of the reign of the ſaid lord *James* II. late king of *England*, *&c.* the ſaid *E. F.* and *G. L.* proſecuted out of the cout of the ſaid late king *James* II. of his chancery at *Weſtminſter* aforeſaid, a certain writ of the ſaid late king of entry upon a diſſeiſin in the *poſt* againſt the ſaid *E. B.* and *J. W.* then tenants of the freehold of 60 meſuages with the appurtenances in the pariſhes of St. *Andrew Holborn* and St. *Dunſtan in the Weſt*, of which the tenements aforeſaid with the appurtenances, whereof the ſaid *J. T.* is returned tenant as aforeſaid, were parcel, to the then ſheriffs of *London* directed, by which writ the ſaid late king commanded the ſaid late ſheriffs of *London*

Recovery.

Writ of entry.

that they ſhould command the ſaid *E. B.* and *J. W.* that juſtly and without delay they ſhould render to the ſaid *E. F.* and *G. L.* the ſaid 60 meſuages with the appurtenances, which they the ſaid *E. F.* and *G. L.* claimed to be their right and inheritance, and into which they the ſaid *E. B.* and *J. W.* had not then entry, but after a diſſeiſin which *H. H.* thereof unjuſtly and without judgment had made of them the ſaid *E. F.* and *G. L.* within 30 years then laſt paſt, as they then ſaid; and whereupon they then complained, that the ſaid *E. B.* and *J. W.* then deforced them there; and unleſs they did ſo, and that the ſaid *E. F.* and *G. L.* ſhould make the ſaid then ſheriffs ſecure of proſecuting their claim, then they ſhould ſummon by good ſummoners the ſaid *E. B.* and *J. W.* to be before the juſtices of the ſaid late king here, *to wit*, at *Weſtminſter* aforeſaid, from the day of *Eaſter* in 15 days then next following, to ſhew wherefore they did not; and that the ſaid then ſheriffs ſhould have there the ſummoners, and that writ: At which ſaid 15th day from the day of *Eaſter*, before Sir *H. B.* knight, and his companions, then juſtices of the ſaid late king of the bench here, came as well the ſaid *E. F.* and *G. L.* as the ſaid *E. B.* and *J. W.* in their proper perſons, and *B. T.* and *T. K.* knights, then ſheriffs of *London* aforeſaid, then and there returned the ſaid writ to them in form aforeſaid directed, in all things ſerved and executed, *to wit*, that the ſaid *E. F.* and *G. L.* had found to the ſaid ſheriffs pledges of

Parties appear.

Writ returned.

proſecuting the ſaid writ, *to wit*, *John Doe* and *Richard Roe*; and that the ſaid *E. B.* and *J. W.* were ſummoned by *J. D.* and *R. F.* And thereupon the ſaid *E. F.* and *G. L.* in their proper perſons declared againſt the ſaid *E. B.* and *J. W.* then tenants of the freehold of the ſaid 60 meſuages with the appurtenances, of which the tenements aforeſaid with the appurtenances, whereof the ſaid *J. T.* is returned tenant as aforeſaid, then were parcel, and demanded againſt the ſaid *E. B.* and *J. W.* the ſaid 60 meſuages with the appurtenances, as their right and inheritance, and into which the ſaid *E. B.* and *J. W.* had no entry, but after a diſſeiſin which *H. H.* thereof unjuſtly and without judgment made of them the ſaid *E. F.* and *G. L.* within 30 years, *&c.* And whereupon they ſaid, that they were ſeiſed of the ſaid 60 meſuages with the appurtenances in their demeſne as of fee and right in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, *&c.* And into which, *&c.* And thereof they then brought ſuit, *&c.* And the ſaid *E. B.* and *J. W.* in their proper perſons then came and defended their right, when, *&c.* And thereupon vouched to warranty the ſaid *T. T.* eſq; who was then likewiſe preſent in the ſame court in his proper perſon, and did freely warrant to them the ſaid meſuages with their appurtenances; and thereupon the ſaid *E. F.* and *G. L.* did demand againſt him the ſaid *T.* tenant by his warranty the meſuages aforeſaid with the appurtenances

Count.

Tenant vouches over.

Count againſt firſt vouchee.

purtenances in form aforeſaid; and whereupon they then ſaid, that they were ſeiſed of the meſuages aforeſaid with the appurtenances in their demeſne as of fee and right, in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. and into which, &c. and thereof they then brought ſuit, &c. And the ſaid *T. T.* tenant by his warranty then and there defended his right, when, &c. and thereupon further vouched to warranty *J. W.* who was then likewiſe preſent in the ſame court in his proper perſon, and did freely warrant to him the ſaid meſuages with their appurtenances, &c. And thereupon the ſaid *E. F.* and *G.* did demand againſt him the ſaid *J. W.* tenant by his warranty the meſuages aforeſaid with the appurtenances in form aforeſaid, &c. And whereupon they then ſaid, that they were ſeiſed of the meſſuages aforeſaid, with the appurtenances, in their demeſne as of fee and right in the time of peace, in the time of the then lord the king, by taking the profits thereof to the value, &c. and into which, &c. and thereof they then brought ſuit, &c. And the ſaid *J. W.* tenant by his warranty then defended his right, when, &c. And he then ſaid, that the ſaid *H. H.* did not diſſeiſe the ſaid *E. F.* and *G.* of the meſuages aforeſaid, with the appurtenances, as they the ſaid *E. F.* and *G.* by their writ and count aforeſaid had above ſuppoſed; and of this he then put himſelf upon the country, &c. and the ſaid *E. F.* and *G.* then prayed leave to imparl

Firſt vouchee vouches over.

Count againſt common vouchee.

Common vouchee pleads.

Imparlance.

imparl thereto, and had it, *&c.* And afterwards they the ſaid *E. F.* and *G.* came again into the ſame court here in that ſame term in their proper perſons: And the ſaid *J. W.* altho' he was ſolemnly demanded, did not return, but departed in deſpite of the court, and made default; therefore it was then and there conſidered by the ſame court, that the ſaid *E. F.* and *G.* ſhould recover their ſeiſin againſt the ſaid *E. B.* and *J. W.* of the meſuages aforeſaid, with the appurtenances; and that the ſaid *E. B.* and *J. W.* ſhould have of the land of the ſaid *T. T.* to the value, *&c.* and that the ſaid *T. T.* moreover ſhould have of the land of the ſaid *J. W.* to the value, *&c.* and that the ſaid *J. W.* ſhould be in mercy, *&c.* And thereupon the ſaid *E. F.* and *G.* then prayed the writ of the then ſaid lord the king to the then ſheriffs of *London* aforeſaid to be directed, to make plenary ſeiſin to him of the meſuages aforeſaid, with the appurtenances; and it was granted to him returnable here, on the morrow of the aſcenſion of our Lord: At which day came here the ſaid *E. F.* and *G.* in their proper perſons; and the ſaid then ſheriffs of *London*, to wit, *B. T.* and *J. K.* knts. returned, that they by virtue of that writ to them directed, did on the 1ſt day of *May* then laſt paſt make full ſeiſin to them the ſaid *E. F.* and *G. L.* of the meſuages aforeſaid, with the appurtenances, as by the ſaid writ was commanded to them, *&c.* as by the ſaid record and proceſs thereof remaining here in court more fully it doth appear.

Common vouchee makes default.

Judgment againſt the tenant.

Againſt firſt vouchee.

Againſt common vouchee.

Writ of ſeiſin.

pear. Which recovery, and the execution thereof in form aforeſaid had, were had as to the tenements aforeſaid, with the appurtenances, whereof the ſaid *J. T.* is returned tenant as aforeſaid, to the uſes in the ſaid indenture quadripartite herein before ſpecified, and to no other uſe. And the ſaid *W. S.* further ſaith, that the ſaid *T. T.* never had any iſſue male or female of his body on the body of the ſaid *E.* his wife begotten born alive. And the ſaid *W. S.* further ſaith, that the ſaid *E.* before the day of the ſuing forth of the aforeſaid writ of *Scire facias*, to wit, on the 1ſt day of *July* in the year of our Lord 1736. at the pariſh of St. *Andrew Holborn* aforeſaid died; and this the ſaid *W. S.* is ready to verify: Wherefore he prayeth judgment, and his execution of the debt and damages aforeſaid againſt the ſaid *J. T.* of the aforeſaid tenements, with the appurtenances, of which he is ſo returned tenant as aforeſaid, to be adjudged to him the ſaid *W. S. &c.*

W. Chapple.

And the ſaid *J. T.* ſaith, that the replication aforeſaid of the ſaid *W. S.* to the plea of the ſaid *J. T.* laſt above pleaded, and the matter therein contained are not ſufficient in law for the ſaid *W. S.* to have execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the ſaid tenements of which he is above returned tenant as aforeſaid, to which ſaid replication in manner and form above pleaded the ſaid *Demurrer.*

J. T. hath no need nor is he obliged by the law of the land to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient replication in this behalf, the ſaid *J. T.* prayeth judgment, and that the ſaid *W. S.* may be barred from having execution againſt him of the debt and damages aforeſaid to be levied of the ſaid tenements of which he is above returned tenant as aforeſaid, *&c.*

G. Eyre.

Joinder. And the ſaid *W. S.* foraſmuch as he hath alledged ſufficient matter in law in his replication aforeſaid to the aforeſaid plea of the ſaid *J. T.* laſt above pleaded, to have execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the aforeſaid tenements, whereof he the ſaid *J. T.* is above returned tenant as aforeſaid, which he is ready to verify, which ſaid matter the ſaid *J. T.* doth not gainſay, nor in any wiſe anſwer thereto, but doth wholly refuſe to admit the ſaid replication, as before prayeth judgment and execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the tenements aforeſaid, whereof he is above returned tenant as aforeſaid, to be adjudged to him.

John Belfield.

To

To the King's moſt Excellent Majeſty.

The humble memorial of F. *earl of* E. *deputy (with your majeſty's approbation) to* E. *duke of* N. *earl marſhal and hereditary marſhal of* England,

Sheweth,

A memorial to his majeſty for a Scire facias *to repeal letters patent.*

THAT his late majeſty king *George* I. was graciouſly pleaſed by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to conſtitute and appoint *J. W.* eſq; *Somerſet* herald of arms during his good behaviour;

That the ſaid *J. W. Somerſet* herald, hath for a courſe of many years laſt paſt abſented himſelf from his duty of attending your majeſty and your majeſty's late royal father at court and parliament;

That the college of arms have been greatly injured by the ſaid *J. W.*'s receiving fees without doing the duties incumbent on the ſaid office, or accounting and paying his proportion towards the incident charges thereof.

That the ſaid *J. W.* hath likewiſe preſumed to publiſh the arms of the nobility and gentry of *England* in the margins of maps he hath lately publiſhed, without leave of the crown or conſent of the officers of arms, whoſe rights and intereſts were thereby invaded.

Your memorialiſt therefore hereby ſubmits the premiſes to your majeſty's royal

royal conſideration, and prays your majeſty will be graciouſly pleaſed to iſſue your royal warrant to your majeſty's attorney general, thereby authoriſing and directing him to cauſe a *Scire facias* to be ſued out in your majeſty's name, for repealing the ſaid letters patent of the ſaid *J. W. Somerſet* herald, for ſuch his miſdemeanors and neglect of duty, he being (as your memorialiſt moſt humbly conceives) unworthy to continue longer in your majeſty's ſervice.

And your memorialiſt
ſhall ever pray.

Effingham M.

Whitehall, June 18, 1739.

His majeſty is graciouſly pleaſed to refer this memoral to Mr. attorney or Mr. ſolicitor general to conſider thereof, and report his opinion, what his majeſty may fitly do therein. Whereupon his majeſty will declare his further pleaſure.

Holles Newcaſtle.

George R.

Warrant for a Scire facias *to repeal* J. W.*'s patent.*

WHEREAS our right truſty and right well beloved couſin *F.* earl *Effingham*, Deputy (with our approbation) to our right truſty and right intirely beloved couſin *E.* duke of *N.* earl marſhal, and hereditary marſhal of *England*, has by his mo-

morial humbly repreſented unto us, that our late royal Father was graciouſly pleaſed by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to conſtitute and appoint *J. W.* eſq; *Somerſet* herald of arms, during his good behaviour; that the ſaid *J. W.* has for a courſe of many years laſt paſt abſented himſelf from his duty of attending us and our late royal father at court and parliament; that the college of arms have been greatly injured by the ſaid *J. W.*'s receiving fees without doing the duties incumbent on the ſaid office, or accounting and paying his proportion towards the incident charges thereof; that the ſaid *J. W.* has likewiſe preſumed to publiſh the arms of the nobility and gentry of *England* in the margins of maps he has lately publiſhed, without our leave or conſent of the officers of arms, whoſe rights and intereſts the memorial ſtates were thereby invaded; the memorialiſt therefore prays that we would be graciouſly pleaſed to iſſue our royal warrants to you our attorney general, thereby authoriſing and directing you to cauſe a *Scire facias* to be ſued out in our name for repealing the ſaid letters patent of the ſaid *J. W.* for ſuch his miſdemeanors and neglect of duty, and as unworthy to continue longer in our ſervice: And whereas we having referred the ſaid memorial to you or our ſolicitor general; our ſaid ſolicitor general by his report thereupon has humbly certified us, that upon receipt of the ſaid memorial he cauſed notice thereof and a

copy

copy to be ſent to the ſaid *J. W.* and he has been attended by the ſolicitor of the memorialiſt and the ſaid *J. W.* and alſo by *J. W.* himſelf, and upon conſidering the affidavits and arguments on both ſides, our ſaid ſolicitor general is humbly of opinion that the ſaid *J. W.* has been guilty of great neglect of duty, for which he is liable to have a *Scire facias* brought in our name in order to repeal his patent, unleſs we ſhall be graciouſly pleaſed to accept of his excuſes, and not put him to undergo a trial. But as it may be neceſſary with regard to many offices where no deputy can be made, and perſonal attendance is required, that they ſhould be given to underſtand that ſuch neglects of duty are not to be ſlightly paſſed over: And as the ſaid *J. W.* will have an opportunity of making his defence upon a trial, and even after a conviction, it will ſtill be in our power to ſuſpend the entring of any judgment to vacate the patent; he humbly conceives it may be fitting for us to order a *Scire facias* to be brought to repeal the ſaid *J. W.*'s patent; and for that purpoſe to iſſue our royal warrant to you, authorizing and directing you to cauſe ſuch *Scire facias* to be ſued out, if we ſhall be pleaſed ſo to do. We taking the premiſes into our royal conſideration are graciouſly pleaſed to condeſcend thereunto. Our will and pleaſure therefore is, that you ſue out and proſecute a writ of *Scire facias* in our name, for repealing the ſaid *J. W.*'s patent. And we do hereby authoriſe and require you to do

and

and perform all matters and things that may be requiſite and neceſſary in that behalf; and for ſo doing this ſhall be your warrant. Given at our court at *Kenſington* the 7th day of *September* 1739. and in the 13th year of our reign. *By his majeſty's command.*

To our truſty and well beloved our attorney general. *Holles Newcaſtle.*

Attorney general's Fiat.

A draught of the *Scire facias* is to be prepared, and the attorney ſigns under it as follows.

Let there be a writ of *Scire facias* iſſued according to the tenor within mentioned, dated this 23d day of *October* 1739. *D. Ryder.*

The attorney general's fee is 2*l.* 2*s.* 0*d.*
His clerk's —— —— 0*l.* 13*s.* 4*d.*

Scire facias *to revoke letters patent granted of the office of* Somerſet *herald.*

GEORGE the Second, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. *Whereas* our late royal father by his letters patent under his great ſeal of *Great Britain*, bearing date at *Weſtminſter* the 20th day of *June* in the 6th year of his reign, did of his ſpecial grace, and of his certain knowledge and mere motion, for himſelf his heirs and ſucceſſors, make, nominate and create, erect, conſtitute and inveſt *J. W.* of *B.* in his county of *York*, eſq; one of his heralds at arms, and

Recital of the letters patent.

and gave him that name commonly called *Somerſet*; and by the ſame letters patent gave and granted the ſtile, title, liberties and preheminencies, with ſuch office convenient and agreeing of ancient time accuſtomed, which ſaid office *S. S.* eſq; otherwiſe *Somerſet*, then deceaſed then lately had and enjoyed, To have and exerciſe the ſaid office, and the name, ſtile, title, liberties and preheminencies aforeſaid, to the ſaid *J. W.* otherwiſe *Somerſet*, as long as he ſhould behave himſelf well in the ſame office. And further, our ſaid late royal father did by his ſaid letters patent, for himſelf, his heirs and ſucceſſors, grant to the ſaid *J. W.* for the exerciſe of the ſaid office, a certain annuity or annual rent of 40 marks of good and lawful money of *Great Britain*, to be had and received by the ſaid *J. W.* otherwiſe *Somerſet*, yearly, as long as he ſhould behave himſelf well in the ſame office, from the treaſurer of our ſaid late royal father, his heirs and ſucceſſors, at the receipt of his *Exchequer*, by the hands of the commiſſioners for his treaſury, or the treaſurer and chamberlain of our ſaid late royal father, his heirs and ſucceſſors, there for the time being, at the feaſt of St. *Michael* the archangel, and of the annunciation of the bleſſed virgin *Mary*, by equal portions; the firſt payment thereof to begin from the feaſt of St. *Michael* the archangel then laſt paſt, together with all other rights, fees, profits, advantages and emoluments whatſoever, to the ſame office due and accuſtomed, in as ample

ple manner and form as *J. P.* eſq; *Somerſet*, Sir *T. St. G.* knt. *Somerſet*, *F. B.* eſq; *Somerſet*, or the ſaid *S. S. Somerſet*, or any other or others of the heralds of our ſaid late royal father called *Somerſet*, then lately had and received for the exerciſe of the ſaid office, as by the ſaid letters patent inrolled in our *Chancery* more fully appears: *And whereas* the ſaid *J. W. Somerſet* at divers times within the ſpace of 13 years laſt paſt was required by the duty of his ſaid office, and ought perſonally to have attended the buſineſs and ſervice thereof; *and whereas* we are given to underſtand, that the ſaid *J. W. Somerſet* for the time laſt mentioned hath not perſonally attended the buſineſs and ſervice of his ſaid office, but hath abſented himſelf therefrom, and neglected the duty thereof, in contempt of us and to our prejudice, whereby the ſaid *J. W. Somerſet* hath incurred the forfeiture of his ſaid office, and of all his right, title and intereſt therein: Nevertheleſs we being willing to have further and more certain information of and concerning the truth of the ſaid premiſes, and that right and juſtice ſhould be done therein, do command you that by good and lawful men of your bailiwic you make known to the ſaid *J. W. Somerſet*, that he be before us in our chancery aforeſaid in one month from the day of St. *Michael* next to come, wherefoever it then ſhall be, to ſhew if he hath or knoweth any thing to ſay why the ſaid letters patent and the inrolment thereof, for the reaſons aforeſaid, ought not to

Aſſignment of breach of duty in non-attendance.

Scire facias.

to be cancelled, vacated and annulled, and reſtored to us in our chancery, there to be cancelled, and further to do and receive concerning the premiſes whatſoever the ſaid court ſhall conſider in this behalf; and have you there the names of thoſe by whom you ſhall ſo cauſe it to be ſo made known to him, and this writ. Witneſs *John* archbiſhop of C. and other guardians and juſtices of the kingdom, at *Weſtminſter* the 11th day of *October* in the 14th year of our reign.

Verney. Aſheton.

Label. To the ſheriff of *Middleſex*, *Scire facias* to revoke letters patent granted to *J. W.* eſq;

Verney. Aſheton.

The within named *J. W. Somerſet*, hath not any thing in my bailiwic, where or by which I can give him notice, as by this writ I am commanded, nor is the ſaid *J. W. Somerſet* found in the ſame.

The anſwer of
Henry Marſhal, eſq;
and
Richard Hoare, eſq;
} Sheriff.

Teſtatum Sci' fa'. *GEORGE* the Second, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Northamptonſhire*, greeting: Whereas (*ut antea* to) and that right and juſtice ſhould be done therein, by our writ to our ſheriff of our county of *Middleſex* we lately commanded

commanded him, that by *(to)* and that he ſhould have there the names of thoſe by whom he ſhould ſo cauſe it to be made known to him, and our ſaid writ; at which day in our ſaid writ contained, our ſaid ſheriff of *Middleſex* aforeſaid, *to wit*, *H. M.* eſq; and *R. H.* eſq; returned to us in our chancery aforeſaid, that the ſaid *J. W. Somerſet*, had not any thing in his bailiwic where or by which he could give him notice, as by the ſaid writ he was commanded, nor was the ſaid *J. W. Somerſet* found in the ſame, as by the return thereof, on the file of our chancery remaining on record, doth more fully appear: Whereupon it is ſufficiently teſtified before us in our chancery aforeſaid, that the ſaid *J. W. Somerſet*, hath ſufficient in your bailiwic where or by which you may make it known to him: Therefore we command you, that by good and lawful men of your bailiwic you make known to the ſaid *J. W. Somerſet* that he be before us in our chancery aforeſaid in eight days of St. *Martin* next to come, whereſoever it ſhall then be, to ſhew if he hath or know any thing to ſay why *(to)* ſhall conſider in this behalf; and have you the names of thoſe by whom you ſhall ſo cauſe it to be made known to him, and this writ. Witneſs ourſelf at *Weſtminſter* the 30th day of *October* in the 14th year of our reign.

Verney. Frewen.

Sci. fac. quare executionem non *after error brought in* widow, *dower.* B. R.

GEORGE the Second, *&c.* To the ſheriffs of *London* greeting: *Whereas A. H.*

widow, who was the wife of Sir *R. H.* knt. deceaſed, lately in our court before Sir *R. E.* knt. and his brethren, then our juſtices of the common bench at *Weſtminſter*, by our writ of dower, whereof ſhe hath nothing, *&c.* and by the judgment of the ſame court recovered againſt *M. P.* eſq; as well her ſeiſin of a third part of 24 meſuages, with the appurtenances, in the pariſh of *St. Dunſtan in the weſt*, *London*, as alſo 754*l.* 6*s.* 7*d.* as well for the value of the third part of the tenements aforeſaid, with the appurtenances, from the time of the death of the ſaid Sir *R.* her late huſband, *&c.* and whereof the ſaid Sir *R.* died ſeiſed, as for her damages, coſts and charges, which ſhe ſuſtained by reaſon of the detaining the ſaid dower, whereof the ſaid *M.* is convicted, as by the inſpection of the record and proceſs thereof, which by virtue of our writ for correcting errors proſecuted by the ſaid *M.* of and upon the premiſes, we lately cauſed to be brought into our court before us, it appeareth to us of record; and now on the behalf of the ſaid *A.* we have received information in our court before us, that although judgment be thereof given, yet execution of the ſaid judgment doth ſtill remain to be done unto her; whereupon the ſaid *A.* hath beſought us, that a proper remedy may be provided for her in this behalf: *We therefore* being willing that what is juſt ſhould be done in this behalf, do command you that by honeſt and lawful men of your bailiwic ye warn the ſaid *M.* that he appear before us

us on the octave of the purification of the bleſſed virgin *Mary*, whereſoever we ſhall then be in *England*, to ſhew if he hath or knoweth of any thing to ſay for himſelf, wherefore the ſaid *A.* ſhould not have her execution againſt him, as well for the ſeiſin of the ſaid third part of the tenements aforeſaid, with the appurtenances, as the value, damages, coſts and charges aforeſaid, according to the force, form and effect of the recovery aforeſaid, if it ſhall ſeem expedient to him, and further to do and receive what our ſaid court before us ſhall then conſider of him in this behalf: And have ye there then the names of thoſe by whom ye ſhall have warned him, and this writ. Witneſs *Philip* lord *Hardwicke* at *Weſtminſter* the 23d day of *January* in the 9th year of our reign.

Ventris.

Sci. fac. quare execut. non *after error on a judgment in the palace court.* B. R.

GEORGE the Second, *&c. To* the ſheriff of *Surry* greeting: *Whereas J. Y.* lately in the court of our palace of *Weſtminſter*, before the judges of that court without our writ, by the judgment of the ſame court, recovered againſt *T. W.* 6*l.* 19*s.* 10*d.* for his damages which he ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *T.* to the ſaid *S.* at *Southwark* in your county, and within the juriſdiction of the ſame court, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *T.* is convicted, as by the inſpection of the record and proceſs thereof in our court

before us at *Weſtminſter* now remaining, and which for certain cauſes we lately cauſed to be brought into our ſame court before us, appeareth to us of record; and now on the behalf of the ſaid *J.* in our court before us we have been informed that although judgment be thereof given, yet execution of the ſaid damages ſtill remaineth to be made to the ſaid *J.* Whereupon the ſaid *J.* hath beſought us that a proper remedy may be provided for him in this behalf; *And* we being willing that what is juſt ſhould be done in this behalf, do command you, that by good and lawful men of your bailiwic you make known to the ſaid *T.* that he be before us on the octave of St. *Hilary*, whereſoever we ſhall then be in *England*, to ſhew if any thing he hath or knoweth to ſay for himſelf why the ſaid *J.* ought not to have his execution againſt him of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſame court before us ſhall conſider of him in this behalf: And have you there the names of thoſe by whom you ſhall make known to him, and this writ. Witneſs, *&c.*

Mich. 6 *Geo.* 2.

Entry of Sci. fi. Inq. *againſt executors.* B. R.

Recital of Fi. fa. *againſt the*

THE lord the king ſent to the ſheriffs of *London* his writ cloſe, in theſe words, to wit, *George* II. *&c. To* the ſheriffs of *London* greeting. *Whereas* by our writ we lately commanded you, that of the goods and

and chattels which were of *T. H.* deceaſed, at the time of his death, being in the hands and cuſtody of *A. H.* and *B. H.* executors of the teſtament and laſt will of the ſaid *T. H.* to be adminiſtered in your bailiwic, you ſhould cauſe to be made 511 *l.* 10 *s.* which *T. M.* lately in our court before us at *Weſtminſter*, by bill without our writ and by the judgment of the ſame court recovered againſt the ſaid *T. H.* in his life-time, for his damages which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings made to the ſaid *T. M.* by the ſaid *T. H.* in his life-time, as for his coſts and charges expended by him about his ſuit in that behalf; whereof the ſaid *T. H.* was convicted, as appeareth to us of record. *And* whereupon lately in our ſame court before us, it was conſidered, that the ſaid *T. M.* ſhould have his execution againſt the ſaid *A.* and *B.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered, as alſo appeareth to us of record; and that you ſhould have that money before us at *Weſtminſter* on *Monday* next after three weeks of St. *Michael* to render to the ſaid *T. M.* for his damages aforeſaid. *And* by that writ we alſo commanded you, that of the goods and chattels which were of the ſaid *T. H.* being in the hands of the ſaid *A.* and *B.* in your bailiwic to be adminiſter'd, you ſhould cauſe to be made 16 *l.* which were adjudged to the ſaid *T. M.* in our ſaid court

executors on a judgment in caſe recovered againſt the teſtator.

After Sci. fa. *againſt the executors.*

And for coſts on the Sci. fa. de bonis teſtatoris.

court before us at *Weſtminſter*, according to the form of the ſtatute in ſuch caſe thereupon lately made and provided, for his coſts and charges expended by him about his ſuit, in the proſecution of our writ of *Scire facias* of and upon the ſaid judgment againſt the ſaid *A.* and *B.* in our court before us at *Weſtminſter* aforeſaid lately proſecuted, whereof the ſaid *A.* and *B.* were convicted, as alſo appeareth to us of record, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered if they had ſo much in their hands to be adminiſtered; and if they had not ſo much in their hands to be adminiſtered, then the ſaid 16 *l.* to be levied of the proper goods and chattels of the ſaid *A.* and *B.* And that you ſhould have that money before us at *Weſtminſter* at the day aforeſaid, to render to the ſaid *T. M.* for thoſe coſts and charges. *And* you at that day returned to us that the ſaid *A. H.* and *B. H.* had not any goods or chattels, and that neither of them had any goods or chattels in your bailiwic which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands to be adminiſtered, whereof you could cauſe to be made the damages, coſts and charges aforeſaid, or any part thereof. And that the ſaid *A.* and *B.* or either of them, had not any goods or chattels in your bailiwic whereof you could cauſe to be made the ſaid 16 *l.* for coſts and charges aforeſaid or any part thereof. *And* becauſe the ſaid return by you ſo made as aforeſaid in

Si tantum, &c.

Si non, &c. de bonis propriis.

Return.

in our court before us at *Weſtminſter* aforeſaid, ſeemeth to be in delay of the execution of the ſaid damages, coſts and charges ſo as aforeſaid recovered and adjudged; *And alſo* for that that in our ſame court before us at *Weſtminſter* aforeſaid, on the behalf of the ſaid *T. M.* it is ſufficiently teſtified, that diverſe goods and chattels which were of the ſaid *T. H.* at the time of his death, to the value of the ſaid damages, coſts and charges, came to the hands and poſſeſſion of the ſaid *A.* and *B.* after the death of the ſaid *T. H.* to be adminiſtered, and that the ſaid *A.* and *B.* have ſold, waſted and eloined the ſaid goods and chattels, and have converted and diſpoſed of the money coming therefrom to their own proper uſe, to the intent that the ſaid execution thereof ſhould not yet be made; *And* we being unwilling that thoſe things which in our ſame court before us have been rightly acted and adjudged, ſhould be avoided by art or deceit, command you that of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered in your bailiwic, you cauſe to be made the damages, coſts and charges aforeſaid, if thereof you can levy the ſame; and have the money thereof levied before us at *Weſtminſter*, on *Tueſday* next after the morrow of *All Souls*, to render the ſaid *T. M.* for the damages, coſts and charges aforeſaid. *And* if you cannot levy the ſame, then if it can appear to you by inquiſition, in this behalf, to be taken upon the oath of good

Devaſtavit *ſuggeſted.*

Fi. fac. de bonis teſtatoris.

If the ſheriff cannot levy, then if it ſhall appear by inquiſition that

the executors have waſted, &c.

and lawful men of your bailiwic, or by any means whereby you may be better informed that the ſaid *A.* and *B.* have ſold, waſted, eloined or converted to their own proper uſe goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be admiſter'd, to the value of the damages, coſts and charges aforeſaid, or of any part of them; *Then* by good and lawful men of your bailiwic make known to the ſaid *A.* and *B.* that they be before us at *Weſtminſter* on the ſaid *Tueſday* next after the morrow of *All Souls*, to ſhew if any thing they have or know to ſay for themſelves, why the ſaid *T. M.* ought not to have his execution againſt them of the damages, coſts and charges aforeſaid, to be levied of the proper goods and chattels of the ſaid *A.* and *B.* if it ſhall ſeem expedient to him, and further to do and receive what our court before us ſhall then and there conſider of them in this behalf; and have then as well the names of thoſe by whoſe oath you ſhall take that inquiſition in this behalf, as the names of them by whom you ſhall make known to the ſaid *A.* and *B.* and this writ. Witneſs *Robert* lord *Raymond* at *Weſtminſter*, the 23d day of *October* in the 6th year of our reign.

Scire fac. quare execution' non, &c. de bonis propriis.

Return.

At which day before the lord the king at *Weſtminſter* came the ſaid *T. M.* in his proper perſon, and the ſheriffs of *London*, namely Sir *H. H.* knt. and *R. A.* eſq; at that day returned the ſaid writ in form aforeſaid directed to them, in manner and form following,

lowing, that is to ſay, *That* the ſaid *A.* and *B.* had not, nor had either of them any goods or chattels which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands to be adminiſtered, in their bailiwic, whereof the damages, coſts and charges aforeſaid, or any part thereof, might be cauſed to be made; *And* that the ſaid *A.* and *B.* had not, nor had either of them any thing in their bailiwic by which they could make known to them or either of them; and that they were not found, nor was either of them found in the ſame. *But* that the ſaid *A. H.* and *B. H.* had diverſe goods and chattels which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands and cuſtody, which after the death of the ſaid *T. H.* came to the hands and poſſeſſion of the ſaid *A.* and *B.* to be adminiſtered, to the value of the damages, coſts and charges aforeſaid, which ſaid goods and chattels they the ſaid *A.* and *B.* have eloined, waſted and converted to their own proper uſe, as appeareth to the ſaid ſheriffs by a certain inquiſition taken in that behalf, on the oath of good and lawful men of their bailiwic, and annexed to the ſaid writ.

Nulla bona.

Nihil quoad ſci. fac.

Devaſtavit per inquiſit'.

And the ſaid *A. H.* and *B. H.* at the ſame day being ſolemnly called, come in their proper perſons and defend the force and injury when, *&c.* and they ſay that the ſaid *T. M.* ought not to have his execution againſt them of the damages aforeſaid, of their proper goods and chattels, becauſe they ſay that they the ſaid *A.* and *B.* on the day of

Plea, Plene Adminiſtraver'.

of the ſuing forth the ſaid writ of *Scire facias*, had fully adminiſtered all the goods and chattels which were of the ſaid *T. H.* at the time of his death, which had come to the hands of the ſaid *A.* and *B.* to be adminiſtered, to wit, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*; and that they have not, nor had on the day of ſuing forth the ſaid writ of *Scire facias*, any goods or chattels which were of the ſaid *T. H.* at the time of his death, in their hands to be adminiſtered; *Without this*, that the ſaid *A.* and *B.* have waſted, ſold, eloined or converted, or diſpoſed to their own proper uſe any goods or chattels which were of the ſaid *T. H.* at the time of his death, in manner and form as above is ſuppoſed by the ſaid return of the ſaid writ of *Scire facias* and the inquiſition aforeſaid thereupon taken; and this they are ready to verify. Wherefore they pray judgment if the ſaid *T. M.* ought to have execution againſt them of the ſaid damages, coſts and charges of the proper goods and chattels of the ſaid *A.* and *B.* *&c.*

Devaſtavit *traverſed.*

Replication, iſſue on the traverſe.

And the ſaid *T. M.* ſaith, that he by any thing by the ſaid *A.* and *B.* above in pleading alledged ought not to be precluded or retarded from having his execution againſt the ſaid *A.* and *B.* of the damages, coſts and charges aforeſaid, of the proper goods and chattels of the ſaid *A.* and *B.* becauſe he ſaith, that the ſaid *A.* and *B.* have eloined, waſted and converted to their own proper uſe diverſe goods and chattels which were of the

the ſaid *T. H.* at the time of his death, and which after the death of the ſaid *T. H.* came to the hands and poſſeſſion of the ſaid *A.* and *B.* to be adminiſtered, to wit, to the value of the damages, coſts and charges aforeſaid, in manner and form as above is found by the ſaid inquiſition, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and this he prayeth may be inquired of by the country: *And* the ſaid *A.* and *B.* do ſo likewiſe: *Therefore* it is commanded to the ſheriffs that they cauſe to come before the lord the king at *Weſtminſter*, on next after twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, at the ſame place, *&c.* Venire facias.

Mich. 6 *Geo.* 2. *Verdict for the plaintiff.*

Error in parliament, and bail put in the judgment, being *de bonis propriis.*

Eaſter 5 *Geo.* 2.

London, to wit, *The* lord the king ſent his writ cloſe to the ſheriffs of *L.* directed in theſe words, *to wit*, *George* the Second, *&c. To* the ſheriffs of *L.* greeting. *Whereas T.* B. R. *M.* lately in our court before us at *W.* by bill and without our writ, and by the judgment of the ſame court recovered againſt *T. H.* 511 *l.* 10 *s.* for his damages which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings lately Sci. Fa. *againſt executors on a judgment againſt teſtator.* *Recital of judgment.*

lately made by the ſaid *T. H.* to the ſaid *T. M.* as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *T. H.* is convicted, as appeareth to us of record. *And* afterwards the ſaid *T. H.* at *L.* aforeſaid, *to wit*, in the pariſh of St. *Mary le Bow* in the ward of *Cheap*, made his teſtament and laſt will in writing, and by the ſame teſtament conſtituted *A. H.* and *B. H.* executors thereof, and afterwards died there; after whoſe death the ſaid *A. H.* and *B. H.* took upon themſelves the burthen of the execution of the ſaid teſtament. *And* now on the behalf of the ſaid *T. M.* in our court before us we have been informed, that although judgment be thereof given, yet execution of the damages aforeſaid ſtill remaineth to be made to him; whereupon ſaid *T. M.* prayeth that a proper remedy may be provided for him in this behalf. *And we* being willing that what is juſt ſhould be done in this behalf, command you that by good and lawful men of your bailiwic you make known to the ſaid *A. H.* and *B. H.* that they be before us at *W.* on *Wedneſday* next after 15 days of *Eaſter*, to ſhew if they have or know any thing to ſay for themſelves, why the ſaid *T. M.* ought not to have his execution againſt the ſaid *A. H.* and *B. H.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A. H.* and *B. H.* to be adminiſtered, according to the force, form and effect of the ſaid recovery, if it ſhall

Teſtator made his will and defendants executors thereof.

Dies, and defendants take the executorſhip upon them.

Sci. Facias.

ſeem expedient to them; and further to do and receive all and ſingular thoſe things which our ſaid court before us ſhall then and there conſider of them in this behalf; and have there then the names of them by whom you ſhall make known to them, and this writ. Witneſs *Robert* lord *Raymond* at *W.* the 12th day of *February* in the 5th year of our reign.

At which day before the ſaid lord the king at *W.* came the ſaid *T. M.* in his proper perſon, and the ſheriffs of *L.* namely, *S. R.* and *T. P.* eſqs. at that day return, that the ſaid *A. H.* and *B. H.* have nothing, nor hath either of them any thing in their bailiwic, whereby they can make known to them or to either of them, nor are they found, nor is either of them found in the ſame. And the ſaid *A. H.* and *B. H.* come not. *Therefore*, as before, it is commanded to the ſheriffs of *L.* that by good, *&c.* they make known to the ſaid *A. H.* and *B. H.* that they be before the ſaid lord the king at *W.* on *Thurſday* next after three weeks of *Eaſter*, to ſhew in form aforeſaid, if, *&c.* And further, *&c.* The ſame day is given to the ſaid *T. M.* at the ſame place, *&c.*

Return Nihil.

Alias *awarded.*

At which day before the ſaid lord the king at *W.* came the ſaid *T. M.* in his proper perſon; and the ſaid ſheriffs of *L.* aforeſaid, as before, return, that the ſaid *A. H.* and *B. H.* have nothing, nor hath either of them, any thing in their bailiwic, whereby they can make known to them or to either of them, nor are they found, nor is either of them

Return Nihil.

Defendants appear.

Plea, a Ca. Sa. *againſt teſtator, who being taken in execution paid the damages recovered.*

them found in the ſame. *And* the ſaid *A. H.* and *B. H.* at the ſame day being ſolemnly called, alſo come, by *N. T.* their attorney, and ſay, *That* the ſaid *T. M.* ought not to have execution againſt the ſaid *A. H.* and *B. H.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* (as is above ſuppoſed by the ſaid writ) to be adminiſtered, becauſe they ſay, that after the giving the ſaid judgment, and before the iſſuing out of the ſaid firſt writ of *Scire facias*, and in the life-time of the ſaid *T. H. to wit*, on the 18th day of *June* in the 5th year of the reign of the ſaid lord the preſent king, the ſaid *T. M.* for obtaining his ſaid damages, proſecuted out of the court here of and upon the ſaid judgment a certain writ of the ſaid lord the king of *Capias ad ſatisfaciendum* againſt the ſaid *T. H.* directed to the then ſheriffs of *L.* aforeſaid, by which ſaid writ it was commanded to the ſaid then ſheriffs, that they ſhould take the ſaid *T. H.* if he ſhould be found in their bailiwic, and ſafely keep him, ſo that they might have his body before the ſaid lord the king at *W.* on *Wedneſday* next after three weeks of the holy *Trinity*, to ſatisfy the ſaid *T. M.* of the damages aforeſaid, whereof he was convicted; and that they ſhould have then here the ſaid writ; which ſaid writ of *Capias ad ſatisfaciendum* the ſaid *T. M.* afterwards, and in the life-time of the ſaid *T. H. to wit*, on the 20th day of *June* in the 5th year aforeſaid, at *L.* aforeſaid, *to wit*, in the

the pariſh of St. *Mary le Bow* in the ward of *Cheap*, delivered to *J. F.* eſq; and Sir *I. S.* knight, then being ſheriffs of *L.* aforeſaid, to be executed in due form of law; by virtue of which ſaid writ of *Capias ad ſatisfaciendum* the ſaid *J. F.* eſq; and Sir *J. S.* knight, then as aforeſaid being ſheriffs of *L.* aforeſaid, afterwards and before the return of the ſaid writ, and in the life-time of the ſaid *T. H. to wit*, on the 1ſt day of *July* in the 5th year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, took and arreſted the ſaid *T. H.* and then and there had and detained the ſaid *T.* in their cuſtody in execution for the damages aforeſaid, until the ſaid *T. H.* afterwards in his life-time, *to wit*, on the 2d day of *July* in the 5th year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid paid and ſatisfied the ſaid damages to the ſaid *T. M.* And this the ſaid *A.* and *B.* are ready to verify: Wherefore they pray judgment if the ſaid *T. M.* ought to have execution againſt the ſaid *A.* and *B.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* (as above is ſuppoſed by the ſaid writ) to be adminiſtered, *&c.*

Replication, that the teſtator was not taken in execution, &c.

And the ſaid *T. M.* ſaith that he by any thing before alledged ought not to be precluded from having his execution of the damages aforeſaid in form aforeſaid, becauſe *in proteſting* that he the ſaid *T. M.* did not proſecute any ſuch writ of *Capias ad ſatisfaciendum*, as the ſaid *A.* and *B.* above in pleading have

have alledged, *and alſo in proteſting* that the ſaid *T. H.* in his life-time did not pay or ſatisfy the damages aforeſaid, or any part thereof, to the ſaid *T. M.* *For plea* the ſaid *T. M.* ſaith, that the ſaid *T. H.* in his life-time was not taken in execution for the damages aforeſaid in manner and form as the ſaid *A.* and *B.* above in pleading have alledged; and he prayeth that this may be inquired of by the country; *And* the ſaid *A.* and *B.* do ſo likewiſe, *&c.* *Therefore* let a jury come thereupon before the lord the king at *Weſtminſter* on —— next after ——; and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue.

Venire facias.

Sci. fac. quare execut. non, &c. *on a judgment in an inferior court removed by writ of error.* B. R.

GEORGE, &c. To the ſheriff of *Devonſhire*, greeting: *Whereas W. B.* in our court before the mayor of the borough of *Totneſs* in your county, by the judgment of the ſame court recovered againſt *W. G.* 5 *l.* 3 *s.* 4 *d.* which in our ſaid court were adjudged to the ſaid *W. B.* for his damages which he ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *W. B.* to the ſaid *W. G.* and not performed, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *W. G.* is convicted, as by the inſpection of the record and proceſs thereupon, which for the cauſe of error intervening we lately cauſed to come in our court before us, and in our ſaid court before us is now remaining, more fully appeareth: And now on the behalf of the ſaid *W. B.*

W. B. we have been lately informed in our court before us, that although judgment be thereupon given, yet execution of the ſaid judgment ſtill remaineth to be made to him; whereupon the ſaid *W. B.* hath prayed us, that a proper remedy may be provided for him in this behalf: *And* we being willing that what is juſt ſhould be done in this behalf, *command you*, that by good and lawful men of your bailiwic, you make known to the ſaid *W. G.* that he be before us in 15 days of St. *Martin*, whereſoever we ſhall then be in *England*, to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *W. B.* ought not to have execution of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſaid court before us ſhall then conſider of him in this behalf; and that you have there then the names of them by whom you ſhall make known to him, and this writ. Witneſs, *&c.*

Sci. fac. *for executors to receive a judgment obtained by their teſtator.*

GEORGE, &c. To the ſheriff of *Bucks* greeting: Whereas *J. D.* lately in our court, *to wit*, in the term of St. *Hilary* in the 9th year of our reign, before *Alexander Denton*, eſq; Sir *John Forteſcue Aland*, knt. and *Thomas Reeve*, eſq; then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt *J. B.* late of *Chepping-Wycombe* in your county, inn-holder, otherwiſe called *J. B.* late of *Chepping-Wycombe* in the county of *Bucks*, inn-holder, as well a certain debt of 590 *l.* as 50 *s.* which

to the ſaid *J. D.* in our ſame court were adjudged for his damages which he had by reaſon of detaining that debt, whereof he is convicted, as by the record and proceedings thereof remaining in our ſame court manifeſtly appeareth; yet execution of that judgment ſtill remaineth to be made, and the ſaid *J. D.* is dead, as we have been informed by *W. C.* and *T. B.* executors of the teſtament and laſt will of the ſaid *J. D.* And becauſe we will that thoſe things which are rightly done in our ſame court be duly put in execution, we command you, that by honeſt and lawful men of your bailiwic you give notice to the ſaid *J. B.* that he be before our juſtices at *Weſtminſter* from the day of the holy *Trinity* in three weeks, to ſhew if he hath or knoweth any thing to ſay for himſelf why the ſaid *W.* and *T.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the recovery aforeſaid, if to him it ſhall ſeem meet: And have you there the names of them by whom you ſhall give him notice, and this writ. Witneſs, *&c.*

Entry thereof on the roll.

It was commanded the ſheriff, that whereas *J. D.* lately in the court of the lord the now king before *Alexander Denton*, eſq; Sir *John Forteſcue Aland*, knt. and *Thomas Reeve*, eſq; then juſtices of him the lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court had recovered againſt *J. B.* late of *Chepping-Wycombe* in the county of *Bucks*, inn-holder, otherwiſe called *J. B.* of *Chepping-Wycombe*

in the county of *Bucks*, inn-holder, as well a certain debt of 500*l.* as 50*s.* which to the ſaid *J. D.* in the ſame court of our ſaid lord the king were adjudged for his damages which he had by reaſon of detaining that debt, whereof he is convicted, as by the record and proceedings thereof in the ſame court of the ſaid lord the now king here, *to wit*, at *Weſtminſter* aforeſaid remaining, manifeſtly appeareth; yet execution of the judgment aforeſaid ſtill remaineth to be made, and the ſaid *J. D.* is dead, as the king hath been informed by *W. C.* and *T. B.* executors of the teſtament and laſt will of the ſaid *J. D.* and becauſe, *&c.* that by honeſt, *&c.* the ſaid ſheriff cauſed the ſaid *J. B.* to know that he ſhould be here at this day, *to wit*, from the day of the holy *Trinity* in three weeks, to ſhew if any thing, *&c.* why the aforeſaid *W. C.* and *T. B.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the recovery aforeſaid; if, *&c.* And now here at this day came the aforeſaid *W. C.* and *T. B.* by *W. T.* their attorney, and preſented themſelves the fourth day againſt the aforeſaid *J. B.* in the plea aforeſaid; and he being ſolemnly required, did not come; and the now ſheriff hath returned that he had nothing, *&c.* nor is to be found, *&c.* *Therefore* it is conſidered, that the aforeſaid *W. C.* and *T. B.* have execution againſt the aforeſaid *J. B.* of the debt and damages aforeſaid by default, *&c.*

Trin. 10 & 11 *Geo.* 2. *Roll.* 659.

Scire facias *in caſe, where one of the plts. married after judgment.*

GEORGE the Second, *&c.* To the ſheriffs of *London* greeting: *Whereas M. B.* and *G. B.* lately, *to wit*, in *Hilary* term in the 13th year of our reign, before Sir *John Willes*, knt. and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of that court recovered againſt *J. B.* late of, *&c.* 75*l.* for their damages which they had on occaſion of the not performing certain promiſes and undertakings to the ſaid *M.* and *G.* then lately made by the ſaid *J.* at *L.* whereof he is convicted, as by the record and proceedings thereof remaining in our ſaid court of the bench is manifeſtly apparent: *And whereas* the ſaid *M.* after the recovery of the damages aforeſaid, *to wit*, on the 1ſt day of *March* in the year of our Lord 1739. at *London* aforeſaid took to her huſband one *P. S.* And although judgment is rendered in form aforeſaid, yet execution of the ſaid judgment ſtill reſteth to be made to them the ſaid *P. M.* and *G.* as we have received information from the ſaid *P. M.* and *G.* and becauſe we are willing that ſuch things as are rightly done in our ſaid court ſhould meet with a due execution; we command you that by honeſt and lawful men of your bailiwic, you cauſe it to be made known to the ſaid *J.* that he be before our juſtices at *W.* in eight days of the holy *Trinity*, to ſhew if he hath or knoweth any thing to ſay for himſelf why

the ſaid *P. M.* and *G.* ought not to have execution againſt him for the damages aforeſaid, according to the form and effect of the ſaid recovery, if it ſhall ſeem expedient to him; and have you there the names of them by whom you ſhall cauſe it to be made known to him, and this writ. Witneſs Sir *John Willes*, knt. at *Weſtminſter*, the 19th day of *May* in the 13th year of our reign,

Borret.

Entry of a Scire facias in debt by a ſurviving plt.

Devonſhire, *to wit.* THE ſheriff was commanded, that whereas *E. P.* clerk, and *R. F.* the younger, gentleman, lately, that is to ſay, in the term of the holy *Trinity* in the tenth year of his preſent majeſty's reign, in his ſaid majeſty's court of the bench here, by the conſideration of the ſame court had recovered againſt *R. C.* late of, *&c.* clerk, as well a certain debt of 250*l.* as alſo 50*s.* which in the ſame court were adjudged to the ſaid *E. P.* and *R. F.* for their damages, which they had ſuſtained by reaſon of the detaining the ſaid debt, whereof he is convicted, as by the record and proceſs thereof remaining in the ſame court manifeſtly appeareth: And whereas the ſaid *E.* afterwards died, and the ſaid *R. F.* ſurvived him; nevertheleſs execution of the ſaid judgment yet remaineth to be made, as the king hath been informed by the ſaid *R. F.* and becauſe, *&c.* that by honeſt, *&c.* he ſhould make known to the ſaid *R. C.* that he ſhould be here at this day, *to wit*, on the morrow

of the aſcenſion of our Lord, to ſhew if any thing, &c. why the ſaid *R. F.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if, &c. And now at this day the ſaid *R. F.* cometh here in his proper perſon, and offereth himſelf the fourth day againſt the ſaid *R. C.* in the plea aforeſaid; and he, though ſolemnly called, cometh not; and the ſheriff now returneth, that he hath nothing, &c. nor is to be found, &c. therefore it is conſidered, that the ſaid *R. F.* have execution againſt the ſaid *R. C.* for the debt and damages aforeſaid, by default, &c.

Return Nihil.

Scire facias *on a recognizance of bail in debt.*

GEORGE the Second, &c. To the ſheriff of *Middleſex*, greeting. Whereas *W. N.* late of, &c. and *W. W.* late of, &c. lately, that is to ſay, in the term of *Eaſter* in the 11th year of our reign, in our court of common pleas, before Sir *John Willes* knt. and his companions, our juſtices of our ſaid court of common pleas at *Weſtminſter*, acknowledged, and each of them did acknowledge to owe to *J. M.* the ſum of 80*l.* which ſaid ſum of 80*l.* they the ſaid *W. N.* and *W. W.* for themſelves and their heirs willed and granted, and each of them for himſelf and his heirs did will and grant, to be made of the lands and chattels of each of them, and to be levied to the uſe and behoof of the ſaid *J.* *And whereas* alſo *A. A.* late of, &c. otherwiſe called, &c. the ſame term, before the ſame juſtices in our ſaid court acknowledged himſelf to owe to the ſaid *J.* the ſum of 160*l.* which ſaid ſum of

160*l.*

160*l.* the ſaid *A.* for himſelf and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the uſe and behoof of the ſaid *J.* under this condition, that if judgment ſhould happen to be given in our ſaid court for the ſaid *J.* againſt the ſaid *A.* in a certain plea of debt upon demand 200*l.* by the ſaid *J.* againſt the ſaid *A.* in our ſaid court brought, then the ſaid *A.* ſhould ſatisfy as well the ſaid debt of 200*l.* as alſo all the damages which to the ſaid *J.* againſt the ſaid *A.* in our ſaid court by occaſion of detaining the ſaid debt ſhould be adjudged, or render his body on that occaſion to our priſon of the *Fleet*; and although the ſaid *J.* in the term of the holy *Trinity* in the 11th and 12th years of our reign, before the aforeſaid Sir *John Willes*, knt. and his companions, our juſtices of our ſaid court of common pleas at *Weſtminſter*, by the conſideration of the ſame court recovered againſt the ſaid *A.* as well the ſaid debt of 200*l.* as alſo 15*l.* which to the ſaid *J.* againſt the ſaid *A.* in our ſame court were awarded for his damages which he had by occaſion of detaining the ſaid debt, whereof he is convicted, as by the record and proceedings thereof in our ſaid court now remaining manifeſtly appeareth: Nevertheleſs the ſaid *A.* hath not ſatisfied the ſaid *J.* for the debt and damages aforeſaid, nor rendered his body to our ſaid priſon upon the occaſion aforeſaid, according to the form of the ſaid recognizance, as we have been given to underſtand by the information of the ſaid

J. And becauſe we are willing that thoſe things which are rightly done and acknowledged in our ſaid court, ſhould be brought to a due execution, we command you, that by honeſt and lawful men of your bailiwic you make known to the ſaid *W. N.* and *W. W.* and *A. A.* that they be before our juſtices at *Weſtminſter* from the day of St. *Martin* in 15 days, to ſhew if they know of or have any thing to ſay for themſelves, that is to lay, the ſaid *W. N.* why the ſaid 80*l.* by him in form aforeſaid acknowledged ſhould not be made upon his lands and chattels, the ſaid *W. W.* why the ſaid 80*l.* by him in form aforeſaid acknowledged ſhould not be made upon his lands and chattels, and the ſaid *A. A.* why the ſaid 160*l.* by him in form aforeſaid acknowledged, ſhould not be made of his lands and chattels, to the uſe and behoof of the ſaid *J.* to be levied according to the form of the ſaid recognizance, if to them it ſhall ſeem expedient: And have you there the names of thoſe by whom you ſhall give ſuch notice, and this writ. Witneſs Sir *John Willes*, knt. at *Weſtminſter*, the 6th day of *November* in the 12th year of our reign.

Eaſter 6 *Ann. Ro.* 336.

Entry of a recognizance of bail on a Habeas corpus cum cauſa, *in* C. B.

London, *to wit.* IT *was commanded* to the mayor, aldermen and ſheriffs of *London*, that immediately after the receipt of this writ they ſhould have the body of *I. S.* detained as it was ſaid in the priſon of the lady

lady the queen under their cuſtody, by whatſoever name the ſaid *I.* ſhould be called in the ſame, together with the day and cauſe of the taking and detaining of the ſaid *I.* before Sir *Thomas Trevor*, knt. chief juſtice of the ſaid lady the queen of the bench, at his chamber in the *Inner Temple*, *London*, to do and receive all and ſingular thoſe things which the ſaid chief juſtice ſhould then and there conſider of him in that behalf: And that they ſhould have there that writ, *&c.* *The Habeas Corpus.*

Afterwards, *to wit*, on the 19th day of *February* in the year of our Lord 1706. the ſaid *I.* came in his proper perſon, under the cuſtody of the ſaid ſheriffs, by virtue of the ſaid writ, and the ſaid ſheriffs, namely Sir *A. C.* knt. and Sir *W. B.* knt. now return, that the execution of the ſaid writ appeareth in a certain ſchedule annexed to that writ, the tenor of which ſaid ſchedule followeth in theſe words: We Sir *A. C.* knt. and Sir *W. B.* knt. ſheriffs of the city of *London* aforeſaid, certify to Sir *Thomas Trevor*, knt. chief juſtice of the lady the queen of the bench, *&c.* named in the writ annexed to this ſchedule, that before the coming of the ſaid writ to us, *to wit*, on the 28th day of *January* in the 5th year of the reign of our lady *Anne*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, *&c.* *I. S.* named in the ſaid writ, was taken at *London* aforeſaid, and detained in the priſon of the ſaid lady the queen under our cuſtody, by virtue of a certain plaint levied in the court of the ſaid lady *The return.*

the

the queen held on the day and year aboveſaid, before me the ſaid Sir *A. C.* knt. one of the ſheriffs of the city aforeſaid, againſt the ſaid *I.* by the name of, *&c.* at the ſuit of *E. S.* in a plea of debt upon demand of 40*l.* whereupon the ſaid parties have pleaded to an iſſue of the country, and ſo it dependeth undetermined; and this is the cauſe of the taking and detaining of the ſaid *I. S.* whoſe body we have ready. *Afterwards, to wit,* on the ſaid 19th day of *February* in the year of our Lord 1706. aforeſaid, before *Robert Tracey,* eſq; one of the juſtices of the court here, at his chamber ſituate in *Serjeants Inn* in *Fleetſtreet,* came the ſaid *I.* and *E. W.* of *Staple's Inn, London,* gent. and *M. J.* of *Fetter-Lane, London,* gent. in their proper perſons, and undertook, and each of them undertook, *to wit,* the ſaid *I.* in the ſum of 80*l.* and the ſaid *E.* and *M.* for themſelves ſeparately in the ſum of 40*l.* that the ſaid *I.* ſhould appear here in his proper perſon, or by his attorney ſufficient in the law, to the action or writ of the ſaid *E.* of and upon the cauſe aforeſaid, before the end of two terms then next following, to be ſued out and proſecuted in the ſame court here, and to anſwer to the ſaid *E.* in the plea aforeſaid; and alſo if it ſhould happen that judgment after the appearance of the ſaid *I.* made in the court here ſhould be given for the ſaid *E.* to ſatisfy the ſaid *E.* of the debt to be recovered or adjudged againſt the ſaid *I.* in the plea aforeſaid, or that he the ſaid *I.* ſhould render himſelf on that occaſion to the

Recognizance.

the priſon of the ſaid lady the queen of the *Fleet*, which ſaid ſum of 80 *l.* acknowledged by the ſaid *I.* in form aforeſaid, the ſaid *I.* acknowledged to be made of his lands and chattels; and which ſaid ſum of 40 *l.* ſeparately acknowledged by the ſaid *E.* and *M.* in form aforeſaid, the ſaid *E.* and *M.* and each of them ſeparately acknowledged to be made of their lands and chattels, and to be levied to the uſe and behoof of the ſaid *E.* in form aforeſaid, if it ſhould happen that the ſaid *I.* ſhould make default in any of the premiſes, and be convicted thereof in lawful manner: *Which* ſaid recognizance the ſaid juſtice afterwards, *to wit*, on the 30th day of *April* in this ſame term, by his own proper hands delivered here into court to be inrolled of record, *&c.*

Scire facias *on a recognizance of bail upon a* Habeas Corpus cum cauſa, *in* C. B.

ANNE, *&c.* *To* the ſheriff of *Middleſex* greeting. *Whereas I. S. E. W.* of *London*, gent. and *M. J.* of *London*, gent. on the 19th day of *February* in the year of our Lord 1706. before *Robert Tracey*, eſq; one of the juſtices of our court of the bench, at his chambers ſituate in *Serjeants Inn* in *Fleet-ſtreet*, *London*, in their proper perſons undertook, and each of them undertook, *to wit*, the ſaid *I.* in the ſum of 80 *l.* and the ſaid *E.* and *M.* for themſelves ſeparately in the ſum of 40 *l.* that the ſaid *I.* ſhould appear in our court before our juſtices at *Weſtminſter* in his proper perſon, or by his attorney ſufficient in the law, to the action or writ of one *E. S.* againſt him the ſaid *I.* of a plea of debt upon demand 40 *l.* to be ſued out and

and proſecuted in our ſame court before the end of two terms then next following, and to anſwer to the ſaid *E.* in the plea aforeſaid; and alſo if it ſhould happen that judgment after the appearance of the ſaid *I.* made in the ſame court ſhould be given for the ſaid *E.* then to ſatisfy the ſaid *E.* of the debt and damages to be recovered or adjudged againſt the ſaid *I.* in the plea aforeſaid, or that he the ſaid *I.* ſhould render himſelf on that occaſion to our priſon of the *Fleet*, which ſaid ſum of 80 *l.* acknowledged by the ſaid *I.* in form aforeſaid, the ſaid *I.* acknowledged to be made of his lands and chattels, and which ſaid ſum of 40 *l.* ſeparately acknowledged by the ſaid *E.* and *M.* in form aforeſaid, the ſaid *E.* and *M.* and each of them ſeparately acknowledged to be made of their lands and chattels, and to be levied to the uſe and behoof of the ſaid *E.* if it ſhould happen that the ſaid *I.* ſhould make default in any of the premiſes, and be thereof lawfully convicted: *Which* ſaid recognizance the ſame juſtice afterwards, *to wit*, on the 30th day of *April* in the 6th year of our reign, by his own proper hand delivered into the ſaid court, to be inrolled of record, and it is inrolled there, as by the record thereof remaining in our ſame court manifeſtly appeareth of record: *And although* the ſaid *E.* before the end of two terms next after the ſaid time of the ſaid recognizance made in form aforeſaid, *to wit*, on the 23d day of *May* in the 6th year of our reign, ſued out our certain original writ of and upon

Recognizance inrolled.

upon the ſaid plea, out of our court of chancery, the ſame court being at *Weſtminſter* in our county of *Middleſex*, againſt the ſaid *I.* returnable and returned in our court before our juſtices at *Weſtminſter* on the morrow of the holy *Trinity* then next following, to which ſaid original writ ſued out and proſecuted by the ſaid *E.* in form aforeſaid, the ſaid *I.* by *J. C.* then his attorney, appeared in our ſame court before our juſtices at *Weſtminſter*, according to the form of the ſaid recognizance, and in the ſame plea in our ſaid court pleaded to iſſue; and in ſuch manner it was proceeded thereupon in our ſame court before our juſtices at *Weſtminſter*, that afterwards, *to wit*, in the term of the holy *Trinity* in the 6th year of our reign, before Sir *Thomas Trevor*, knt. and his companions, our juſtices of the bench aforeſaid, the ſaid *E.* by the conſideration of the ſame court recovered againſt the ſaid *I.* as well the ſaid debt of 40 *l.* as ——, which then were adjudged to the ſaid *E.* in our ſame court for her damages which ſhe then had by occaſion of the detaining that debt, whereof he is convicted, as manifeſtly appeareth by the record and proceſs therein remaining in our court before our juſtices at *Weſtminſter*: *Neverthelefs* the ſaid *I.* hath not yet ſatisfied *Breach.* the ſaid *E.* of the debt and damages aforeſaid recovered in form aforeſaid, nor hath he yet rendered his body in execution of the ſaid judgment to our priſon of the *Fleet*, according to the form and effect of the ſaid recognizance, as we have been informed by the

the ſaid *E.* *And* becauſe we would that thoſe things which in our ſaid court are rightly acted, ſhould be demanded by a due execution; *We command* you, that by good and lawful men of your bailiwic you make known to the ſaid *I. E.* and *M.* that they be before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, to ſhew if any thing they have or know to ſay for themſelves, *to wit*, the ſaid *I.* why the ſaid 80 *l.* by him in form aforeſaid acknowledged, of his lands and chattels, and the ſaid *E.* why the ſaid 40 *l.* acknowledged by him in form aforeſaid, of his lands and chattels, and alſo the ſaid *M.* why the ſaid 40 *l.* alſo acknowledged by him in form aforeſaid, of his lands and chattels, ought not to be made and levied to the uſe and behoof of the ſaid *E.* according to the form of the ſaid recognizance, if it ſhall ſeem expedient to them, and have there the names of them by whom you ſhall make known to them, and this writ. Witneſs, *&c.*

Scire facias ***by adminiſtrator againſt bail, after judgment affirmed in error.***

GEORGE II. by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. Whereas *J. S.* late of *Forſter Lane*, *London*, painter-ſtainer, and *W. W.* the younger, late of the *Bank Side Southwark*, iron-founder, lately, that is to ſay, in the term of St. *Hilary* in the 3d year of our reign, in our court of common pleas, before Sir *R. E.* knt. and his companions, then our juſtices of our ſaid court of common pleas at

at *Weſtminſter*, acknowledged, and each of them did acknowledge to owe to *G. S.* the younger, by the name of *G. S.* the ſum of 200 *l.* which ſaid ſum of 200 *l.* they the ſaid *J. S.* and *W. W.* for themſelves and their heirs willed and granted, and each of them for himſelf and his heirs did will and grant to be made of the lands and chattels of each of them, and to be levied to the uſe and behoof of the ſaid *G. S.* upon this condition, That if judgment ſhould happen to be given in our ſaid court for the ſaid *G. S.* againſt *K. E.* late of *Weſtminſter* in your county eſq; in a plea of treſpaſs upon the caſe upon promiſe, to the damage of the ſaid *G.* of 120 *l.* by the ſaid *G. S.* againſt the ſaid *K.* in our ſaid court brought, then the ſaid *K.* ſhould ſatisfy the ſaid *G. S.* all the damages which to the ſaid *G. S.* in our ſaid court in the ſaid plea of treſpaſs upon the caſe ſhould be adjudged, or ſhould render his body on that occaſion to our priſon of the *Fleet*. And although the ſaid *G. S.* in the ſame term before the aforeſaid Sir *R. E.* knt. and his companions, then our juſtices of our ſaid court of common pleas at *Weſtminſter*, by the conſideration of our ſaid court, recovered againſt the ſaid *K.* 115 *l.* 10 *s.* which to the ſaid *G.* in our ſaid court were adjudged for his damages which he ſuſtained on occaſion of the ſaid treſpaſs on the caſe aforeſaid, and whereof he is convicted, as by the record and proceedings thereupon, which in our court before us by virtue of our writ to correct errors brought by the ſaid *K.* of and concerning

concerning the premiſes, we lately cauſed to be brought in our court before us, and which in our court before us now remaining in all things affirmed may manifeſtly appear. And whereas the ſaid *G.* afterwards, to wit, the 16th day of *March* in the year of our Lord 1730, at *Weſtminſter* aforeſaid, died inteſtate, and after whoſe death adminiſtration of all and ſingular the goods and chattels, rights and credits which were the ſaid *G.*'s at the time of his death, by *W.* by divine providence archbiſhop of *Canterbury*, primate of all *England* and metropolitan, on the 6th day of *April* in the year of our Lord 1731, at *London* in due form law was committed to *G. S.* father of the ſaid *G. S.* the younger; as on the information of the ſaid *G. S.* the father, we have been given to underſtand. And whereupon in our ſaid court before us it was lately conſidered, That the aforeſaid *G. S.* the father might have his execution againſt the ſaid *K.* for the damages aforeſaid; yet the ſaid *K.* hath not ſatisfied the ſaid *G. S.* the younger, in his life-time, nor the ſaid *G.* the father, ſince the death of the ſaid *G.* the younger, the damages aforeſaid; neither hath the ſaid *K.* ſurrendered his body on that occaſion to the priſon of the *Fleet*, as on the information of the ſaid *G. S.* the father, we are given to underſtand. And becauſe we are willing that thoſe things which in like manner are required, and in our ſaid court are rightly done, ſhould be brought to a due execution, We command you, that by honeſt and lawful men of your bailiwic you

you make known to the ſaid *J. S.* and *W. W.* that they may be before our juſtices at *Weſtminſter* on the morrow of the aſcenſion of our Lord, to ſhew if any thing they know of or have to ſay for themſelves, that is to ſay, the ſaid *J. S.* why the ſaid 200 *l.* by him in form aforeſaid acknowledged, ſhould not be made upon his land and chattels, and the ſaid *W. W.* the younger, why the ſaid 200 *l.* by him in form aforeſaid acknowledged, ſhould not be made upon his lands and chattels and be levied according to the form of the ſaid recognizance, if to them it ſeems expedient. And have you there the names of them by whom to them you give ſuch notice, and this writ. Witneſs.

Scire facias *againſt bail.*

GEORGE II. by the grace of God, king of *Great Britain*, *France* and *Ireland*, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. Whereas *F. S.* late of, *&c.* *F. F.* late of, *&c.* and *T. P.* late of, *&c.* lately in our court, to wit, in the term of the *Holy Trinity* in the year of our reign, before Sir *R. E.* knt. and his companions our juſtices of the bench at *Weſtminſter*, acknowledged, and each of them did acknowledge to owe to *E. P.* and *W. F.* the ſum of 38 *l.* which ſaid ſum of 38 *l.* they the ſaid *T. S. F.* and *T. P.* for themſelves and their heirs, willed and granted, and each of them for himſelf and his heirs did will and grant to be made of their and of each of their lands and chattels, and to be levied to the uſe and behoof of the ſaid *E.* and *W.*

upon this condition, that if judgment ſhould happen to be given in our ſaid court for the aforeſaid *E.* and *W.* againſt *T. T.* late of, &c. in a certain plea of treſpaſs on the caſe to the damage of the ſaid *E.* and *W.* of 30 *l.* proſecuted by the ſaid *E.* and *W.* againſt the ſaid *T. T.* in our ſaid court; Then the ſaid *T. T.* ſhould ſatisfy all damages which ſhould be adjudged to the ſaid *E.* and *W.* in our ſaid court, againſt the ſaid *T. T.* in the plea aforeſaid, or ſhould render his body on that occaſion to the priſon of the *Fleet.* And although the ſaid *E.* and *W.* in the term of in the year of our reign, before the ſaid Sir *R. E.* knt. and his companions our juſtices of the bench at *Weſtminſter* aforeſaid, by the conſideration of the ſaid court recovered againſt the ſaid *T. T.* 30 *l.* which were adjudged to the ſaid *E.* and *W.* in our ſaid court, for their damages which they had by occaſion of the ſaid treſpaſs, on the caſe whereof he is convicted, as by the ſaid record and proceedings therein, in our ſaid court remaining, plainly appeareth; Yet the ſaid *T. T.* has not ſatisfied the ſaid damages to the ſaid *E.* and *W.* nor rendered his body, on the occaſion aforeſaid, to the priſon of the *Fleet*, according to the form of the ſaid recognizance, as from the information of the ſaid *E.* and *W.* we are given to underſtand. And becauſe we will that thoſe things which in our ſaid court are rightly acted and acknowledged be duly executed, We command you that by good and lawful men of your bailiwic you make known

The whole damages and coſts as taxed.

known to the ſaid *T. S. F.* and *T. P.* that they be before our juſtices at *Weſtminſter* on the morrow of the purification of the bleſſed virgin *Mary*, to ſhew if any thing they have for themſelves, or know to ſay, to wit, the ſaid *T. S.* wherefore the ſaid 38 *l.* by him in form aforeſaid acknowledged, ought to be made of his lands and chattels; the ſaid *F.* wherefore the ſaid 38 *l.* by him in form aforeſaid acknowledged, ought not to be made of his lands and chattels, and the ſaid *T. P.* why the ſaid 38 *l.* by him in form aforeſaid ought not to be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *E.* and *W.* according to the form of the ſaid recognizance, if to them it ſhall ſeem expedient; and have you there the names of them by whom you ſhall make it known unto them, and this writ. Witneſs Sir *Robert Eyre*, knt. the 23d day of *January* in the year of our reign.

Eyre.

Treſpaſs.

Middleſex, to wit, **D.** *D.* complaineth of *T. D.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf being, of this, that he the ſaid *T.* on the 23d day of *May* in the 6th year of the reign of our ſovereign lord *George* II. now king of *Great Britain*, *&c.* with force and arms, to wit, with ſwords, ſtaves and knives, broke and entered into

Treſpaſs for entering a houſe.

the dwelling houſe of him the ſaid *D.* at the pariſh of St. *Giles in the fields* in the county aforeſaid; and greatly diſturbed him the ſaid *D.* in his quiet poſſeſſion and occupation thereof, and drove out and removed him the ſaid *D.* from his poſſeſſion and occupation thereof, and the ſaid *D.* being ſo driven out and removed for a long time, to wit, for the ſpace of 24 hours kept out; and other enormities to him then and there did, againſt the peace of our ſaid ſovereign lord the now king, and to the damage of the ſaid *D.* 50*l.* and thereof he bringeth ſuit, *&c.*

T. A. for the plaintiff.
R. R. for the defendant. } Pledges, *&c.*

For an aſſault. *Middleſex*, to wit, *M. W.* widow, complaineth of *T. D.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf being, of this, that the ſaid *T.* on the 23d day of *May* in the 6th year of the reign of our ſovereign lord *George* II. now king of *Great Britain*, *&c.* with force and arms, to wit, with ſwords, ſtaves and knives, at the pariſh of St. *Giles in the fields* in the county aforeſaid, made an aſſault on the ſaid *M.* and the ſaid *M.* then and there beat, wounded, and evilly treated, ſo that her life was greatly deſpaired of, and other enormities to her then and there did, againſt the peace of our ſaid ſovereign lord the now king; and to the damage of the ſaid *M.* 50*l.* And thereof ſhe bringeth ſuit, *&c.*

T. A.

T. A. for the plaintiff.
R. R. for the defendant. } Pledges, *&c.*

Middleſex, to wit, *M. B.* late of, *&c.* was attached to anſwer *J. S.* of a plea, wherefore he broke and entered the houſe of the ſaid *J. S.* at the pariſh of St. *James Weſtminſter* in the county of *M.* aforeſaid, and then and there with force and arms, made an aſſault on *E.* the wife of the ſaid *J.* and then and there beat, wounded and ill-treated, carnally knew and committed adultery with the ſaid *E.* and did other injuries to him, to the great damage of the ſaid *J* and againſt the peace of our lord the preſent king, *&c.* *And* whereupon the ſaid *J.* by *A. B.* his attorney complaineth that the ſaid *M.* on the 6th day of *October* in the ſecond year of the reign of our ſovereign lord *George* II. now king of *Great Britain*, *&c.* and at diverſe other days and times between the ſaid 6th day of *October* and the ſecond day of *March* then next following, at the pariſh of St. *James Weſtminſter* in the county of *M.* aforeſaid, with force and arms broke and entered the houſe of the ſaid *J.* and with force and arms made an aſſault on *E.* the wife of the ſaid *J.* and then and there beat, wounded, ill-treated and committed adultery with the ſaid *E.* whereby the ſaid *J.* for the whole time aforeſaid there intirely loſt the comfort, love and affection of the ſaid *E.* his wife, and then and there did other injuries to the ſaid *J.* to the great damage of the ſaid *J.* and againſt

Declaration in treſpaſs for breaking the plaintiff's houſe, aſſaulting and lying with his wife. C. B. Poſtea 470, 471.

the peace of our ſaid lord the king: Wherefore the ſaid *J.* ſaith that he is injured and hath damage to the value of 1000 *l.* and thereof he bringeth ſuit, *&c.*

Declaration in treſpaſs for a criminal converſation with the plaintiff's wife. B. R.

Middleſex, to wit, *T. S.* eſq; complaineth of *J. F.* eſq; in the cuſtody of the marſhal, *&c.* for that, that the ſaid *J.* on the 10th day of *January* in the 10th year of the reign of the lady *A.* late queen of *Great Britain*, *&c.* at the pariſh of St. *Clement Danes* in the ſaid county of *M.* with force and arms, *&c.* made an aſſault on *M.* the wife of the ſaid *T. S.* and then and there beat, wounded, and ill-treated the ſaid *M.* and alſo raviſhed, and then there led away the ſaid *M.* and there retained and kept the ſaid *M.* from the ſaid *T.* contrary to the will of the ſaid *T.* from that time until the 11th day of ——— whereby the ſaid *T.* for the whole time aforeſaid, there intirely loſt the comfort, love and affection which the ſaid *T.* might and could have had with his ſaid wife; and then and there did other injuries to the ſaid *T.* to the great damage of the ſaid *T.* and contrary to the peace of the ſaid late queen, and of our ſaid lord the preſent king. Wherefore the ſaid *T.* ſaith that he is injured and hath damage to the value of 10,000 *l.* and thereof he bringeth ſuit, *&c.* *

Thomſon.

* This declaration was drawn by Mr. *Reeve*; the alterations were made by ſerjeant *Pengelly*, he would not let *carnaliter cognovit* ſtand, and ſaid *rapuit* was as well

Thomſon.

Trin. 16, 17 *Geo.* 2. *Ro.* 537.

Dorſetſhire, BE *it remembered,* that on the 20th day of *April* in *Eaſter* term in the 16th year of the reign of our lord the king that now is, *R. W.* Dr. of phyſic, came here by *J. S.* his attorney, and exhibited to the juſtices of our lord the king of the bench here, his bill againſt *W. B.* gent. one of the attornies of the court of our ſaid lord the king of the bench here, preſent here in court in his proper perſon, the tenor of which ſaid bill followeth in theſe words, to wit, *To* the juſtices of the lord the king of the bench, *Dorſetſhire, R. W.* Dr. of phyſic, by *J. S.* his attorney complaineth of *W. B.* gent. one of the attornies of the court of the lord the king of the bench, preſent here in court in his proper perſon, *for that* the ſaid *W.* on the 1ſt day of *May* in the year of our Lord 1740, and at diverſe other days and times between that day and the 1ſt day of *May* in the year of our Lord 1742, with force and arms made an aſſault upon *M.* the wife of the ſaid *R. W.* at *S.* in the ſaid county, and her the ſaid *M.* then and there raviſhed, embraced and carnally

Memorandum *of a declaration againſt an attorney.* C. B.

Bill againſt an attorney of C. B. *in a plea of treſpaſs and aſſault for criminal converſation with the plaintiff's wife.*

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well left out, for if proved is felony and deſtroys the action; he ſaid it was beſt in all theſe actions to lay the declaration as general as the caſe would allow: the words *alia enormia* letting the plaintiff into a large proof in theſe actions.

knew, whereby the ſaid *R.* loſt and was deprived of the comfort and ſociety of his ſaid wife, and other injuries did to him, to the great damage of the ſaid *R. W.* and againſt the peace of our lord the preſent king, *&c.* Wherefore the ſaid *R.* ſaith that he is injured, and hath ſuſtained damage to the value of 1000 *l.* and thereupon he prayeth remedy, *&c.* Pledges for proſecuting, to wit, *J. D.* and *R. R.*

Pledges.

Imparlance. *And* the ſaid *W. B.* in his proper perſon cometh and defendeth the force and injury when, *&c.* and prayeth leave to imparle thereto here, until *Friday* next after the morrow of the *Holy Trinity*; and he hath it, *&c.* The ſame day is given to the ſaid *R. W.* here, *&c.* *At* which day cometh here as well the ſaid *R. W.* by his ſaid attorney, as the ſaid *W. B.* in his proper perſon. And the ſaid *R. W.* requireth that the ſaid *W. B.* may anſwer his ſaid bill, *&c.* *And* the ſaid *W. B.* in his proper perſon defendeth the force and injury when, *&c.* And ſaith that he is in nothing guilty of the premiſes above laid to his charge, as the ſaid *R. W.* above complaineth againſt him; and of this he putteth himſelf upon the country; *And* the ſaid *R. W.* likewiſe. *Therefore* the ſheriff is commanded, that he cauſe to come here on *Wedneſday* next after three weeks of the *Holy Trinity*, twelve, *&c.* By whom, *&c.* Who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

Plea Not guilty.

Iſſue.

Venire *awarded.*

Declaration in treſpaſs, for breaking plain-

Middleſex, *to wit*, *G. F.* late of, *&c.* was attached to anſwer unto *M. B.* ſpinſter, in a plea,

plea, why he the ſaid *G.* with force and arms the houſe of the ſaid *M.* at the pariſh of ——— in the county aforeſaid, did break and enter, and there without the leave, and againſt the will of the ſaid *M.* a long time continued, and the goods and chattels of the ſaid *M.* there lately found to the value of 10 *l.* did take, ſeiſe, carry away, and to his own proper uſe convert and diſpoſe, and other wrongs to the ſaid *M.* did, to the great damage of the ſaid *M.* and againſt the peace of our lord the now king, *&c.* *And* whereupon the ſaid *M.* by *W. W.* her attorney complaineth, *That* the ſaid *G.* with force and arms, *&c.* on the day of in the year of the reign of *George* II. king of *Great Britain*, *&c.* the houſe of the ſaid *M.* at the pariſh aforeſaid in the county aforeſaid did break and enter, and there without the leave and againſt the will of the ſaid *M.* continued a long time (to wit) for the ſpace of 24 hours, and the goods and chattels, to wit, one feather bed, *&c.* of the ſaid *M.* there lately found, to the value of the aforeſaid 10 *l.* did take, ſeiſe, carry away, and to his own proper uſe convert and diſpoſe; and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *M.* ſaith that ſhe is injured and hath damage to the value of 10 *l.* and thereof ſhe bringeth ſuit, *&c.*

tiff's houſe, tarrying there and carrying away her goods. C. B.

Oxfordſhire, to wit, *M. F.* late of, *&c.* was attached to anſwer to *S. S.* of a plea, wherefore he the ſaid *M.* with force and arms the cloſe of the ſaid *S.* in the pariſh of

Declaration in treſpaſs, for breaking plaintiff's cloſe, treading down the graſs, &c.

laid ſpecially. C. B.

of *Waterperry* in the ſaid county of *O.* broke and entered, and the graſs late growing there to the value of 5 *l.* trod down and conſumed with his feet and the feet of his ſervants, by his and their walking thereon, and other graſs late growing there of the ſaid *S.* to the value of 5 *l.* trod down and conſumed with horſes, oxen, cows and hogs, and other graſs of the ſaid *S.* late growing there, to the value of 5 *l.* with carts and carriages trod down and conſumed, and the earth and ſoil thereof tore up and plowed, and ſix cart-loads of flooded graſs laid down, unloaded and placed in the ſaid cloſe of the ſaid *S.* and permitted the ſaid flooded graſs to continue there for a long time, and alſo another cloſe of the ſaid *S.* in the pariſh aforeſaid broke and entered, and the graſs there late growing to the value of 10 *l.* with his feet and the feet of his ſervants, by his and their walking thereon, and with horſes and dogs, by hunting in the ſaid cloſe, trod down and conſumed; and the hedges, fences, gates and ditches of the ſaid *S.* late being there, to the value of 10 *l.* broke down, deſtroyed, laid to the ground and filled up; and did him other wrongs to the great damage of the ſaid *S.* and againſt the peace of our ſovereign lord the king. *And* whereupon the ſaid *S.* by *E. R.* his attorney complaineth, *That* the ſaid *M.* on the 20th day of *July* in the year of our Lord 1736, at the pariſh of *W.* in the ſaid county of *O.* with force and arms broke and entered a cloſe of the ſaid *S.* containing 10 acres, called *Hogbill*, in the ſaid pariſh

pariſh of *W.* and the graſs of the ſaid *S.* late growing there, to the value, *&c.* trod down and conſumed with his feet and the feet of his ſervants, by his and their walking thereon, and fed on, trod down and conſumed the ſaid graſs with horſes, oxen, cows and hogs, and other graſs of the ſaid *S.* late growing there, to the value, *&c.* with carts and carriages trod down and conſumed, and the earth and ſoil thereof then and there tore and plowed up with the ſaid carts and carriages, and ſix cart-loads of flooded graſs then and there laid down, unloaded and placed, and permitted the ſame graſs ſo laid down and placed, to continue in the ſaid cloſe for the ſpace of one month from thence following, and alſo continuing the ſaid treſpaſs as to the ſaid treading down, conſuming and feeding on the graſs, and alſo tearing and plowing up the earth and ſoil of the ſaid cloſe, at diverſe days and times from the ſaid 20th day of *July* in the year aforeſaid to the 20th day of *October* following; and alſo that he the ſaid *M.* on the 1ſt day of *April* in the year of our Lord 1733, at the pariſh of *W.* aforeſaid, broke and entered another cloſe of the ſaid *S.* there being, called the *Ewe ground*, and the graſs of the ſaid *S.* then late growing there, to the value, *&c.* trod down and conſumed with his feet and the feet of his ſervants, by his and their walking thereon, and alſo with horſes and dogs, by their running thereon, in his the ſaid *M.* and his ſervants then and there hunting with the ſaid horſes and dogs in the ſaid

Continuando.

ſaid laſt mentioned cloſe, and then and there broke down and deſtroyed by the ſaid hunting of the ſaid *M.* and his ſervants, with the ſaid horſes and dogs, the hedges, fences, gates and ditches of the ſaid *S.* then and there, to wit, 20 perches of hedges and 20 perches of fences, and 20 perches of ditches, and five gates then and there being, of the value, *&c.* then and there broke, deſtroyed, laid to the ground, and filled up, continuing the ſaid laſt mentioned treſpaſs at divers days and times from the ſaid 1ſt day of *April* in the ſaid year of our Lord 1733. to the day of the iſſuing forth of the original writ of the ſaid *S.* and then and there did him other wrongs, *&c.* to the great damage, *&c.* againſt the peace, *&c.* whereupon the ſaid *S.* declareth he is injured and damaged to the value of 30 *l.* and thereof he bringeth ſuit, *&c.*

Continuando.

Plea as to part Not guilty.

And the ſaid *M.* by *H. H.* his attorney cometh and defendeth the force and injury when, *&c. And as to* the coming with force and arms, and whatever is againſt the peace of his ſaid majeſty, and all the ſaid treſpaſs above ſuppoſed to be done, except the breaking and entring of the ſaid cloſe called *Hogbill*, in which, *&c.* and the treading down and conſuming of the graſs aforeſaid there growing with his feet and the feet of his ſervants, by walking thereon, and the feeding on, treading down and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading down and conſuming other the graſs there growing with the ſaid

ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, ſaith that he is not guilty thereof as the ſaid *S.* hath above complained againſt him; and thereupon he putteth himſelf upon the country; *and* the ſaid *S.* doth ſo likewiſe: *And* as to the breaking and entering the ſaid cloſe called *Hoghili*, in which, *&c.* and the treading down and conſuming of the graſs aforeſaid there growing with his feet and with the feet of his ſervants, by walking thereon, and the feeding on, treading down and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading and conſuming other the graſs aforeſaid there growing with the ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, the ſaid *M. ſaith that* the ſaid *S.* ought not therefore to have his ſaid action againſt him, *becauſe* he ſaith, that the ſaid cloſe called *Hoghill*, in which the ſaid treſpaſs is above ſuppoſed to be done, at the ſaid time when, *&c.* was and is a piece of meadow containing 10 acres, parcel of a certain common meadow called *Hoghill* in the pariſh of *W.* aforeſaid. *And* the ſaid *M.* further ſaith, that long before the ſaid time when, *&c. E. R.* eſq; was ſeiſed in his demeſne as of fee as well of the ſaid cloſe in which, *&c.* parcel, *&c.* as of another parcel of the ſaid common meadow, containing by eſtimation two acres, with the appurtenances, at one and the ſame time; and being

Iſſue.

As to the reſidue, that the locus in quo, &c. *was parcel of a common meadow, that* E. R. *long before,* &c. *was ſeiſed in fee of the* locus in quo, &c. *and of another parcel of ground in the ſame meadow, to which he had no way but over the* locus in quo, &c. *that* E. R. *demiſed the ſaid other parcel of ground to the deft. who therefore juſtifies in uſing his way to the ſame, doing as little damage as he could.*

ing

ing ſo ſeiſed thereof, the ſaid *E.* had not any way to the ſaid parcel of the ſaid meadow containing two acres, except from *W.* aforeſaid in the county of *B.* through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into the ſaid parcel of the ſaid meadow containing by eſtimation two acres, and back again from that parcel of the ſaid meadow into, through and over the ſaid cloſe in which, *&c.* to *W.* aforeſaid, for the uſe and enjoyment of the ſaid parcel of the ſaid meadow containing by eſtimation two acres; *and* the ſaid *E.* being ſo ſeiſed of the ſaid parcel of the ſaid meadow containing by eſtimation two acres, with the appurtenances, as aforeſaid, he the ſaid *E.* not then having any way to the ſaid parcel of the ſaid meadow containing two acres except from *W.* aforeſaid in the ſaid county of *B.* through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into the ſaid parcel of the ſaid meadow containing by eſtimation two acres, and back again from that parcel of the ſaid meadow into, through and over the ſaid cloſe in which, *&c.* to *W.* aforeſaid, for the uſe and enjoyment of the ſaid parcel of the ſaid meadow containing by eſtimation two acres, before the ſaid time when, *&c. to wit*, on the 26th day of *March* in the year of our Lord 1736. aforeſaid, at the pariſh aforeſaid, demiſed to the ſaid *M.* the ſaid parcel of the ſaid common meadow containing by eſtimation two acres, with the appurtenances; To have and to hold to the ſaid *M.* from thence at the will of the ſaid *E.* and *M. by virtue* of which ſaid demiſe the ſaid *M.* entered into

to the ſaid parcel of the ſaid meadow ſo demiſed to him as aforeſaid, with the appurtenances, and has been from thenceforth hitherto poſſeſſed thereof, and being ſo poſſeſſed, he the ſaid *M.* of neceſſity had and ought to have a way from *W.* aforeſaid into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into his ſaid parcel of his ſaid meadow, and back again from his ſaid parcel of his ſaid meadow into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* to *W.* aforeſaid, for the neceſſary uſe and enjoyment of the ſaid parcel of the ſaid common meadow; *and* therefore he the ſaid *M.* at the ſaid ſeveral times when, *&c.* went with his ſaid carts and carriages in the ſaid declaration mentioned, drawn by his ſaid horſes therein alſo mentioned, in the ſaid way from *W.* aforeſaid into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into his ſaid parcel of the ſaid meadow, and back again from his ſaid parcel of the ſaid meadow into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* for the fetching, taking and carrying of the hay and graſs of the ſaid *M.* growing, ariſing and made in his ſaid parcel of the ſaid common meadow, with his ſaid horſes, carts and carriages, by himſelf and his ſaid ſervants in the ſaid way, as it was lawful for him; *and* in ſo doing he the ſaid *M.* and his ſaid ſervants neceſſarily trod down and conſumed with their feet in walking in the ſaid way a little of the graſs aforeſaid, then growing in the ſaid cloſe in which, *&c.* parcel, *&c.* and the ſaid horſes

of

of the ſaid *M.* in their paſſing in the ſaid way through the ſaid cloſe in which, *&c.* parcel, *&c.* for the cauſe aforeſaid, againſt the will of the ſaid *M.* did ſnatch and eat, and neceſſarily trod down and conſumed a little of the graſs aforeſaid there growing, doing as little damage as might be; and the ſaid *M.* did neceſſarily in uſing his ſaid way tread down and conſume on that occaſion a little other graſs there growing with the ſaid carts and carriages, and tore and plowed up with his ſaid carts and carriages on that occaſion the earth and ſoil aforeſaid there, doing as little damage there on that occaſion as he could; *which* are the breaking and entering of the ſaid cloſe called *Hogbill* in which, *&c.* and the treading down and conſuming of the graſs aforeſaid there growing with his feet and the feet of his ſervants, by walking thereon, and the feeding on, treading down and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading down and conſuming other the graſs aforeſaid there growing with the ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, of which the ſaid *S.* hath above complained againſt him; *and* this he is ready to verify: *Wherefore* he prayeth judgment if the ſaid *S.* ought therefore to have his ſaid action againſt him, *&c.*

Replication de injuria ſua propria.

And the ſaid *S.* as to the ſaid breaking and entering of the ſaid cloſe called *Hogbill*, in which, *&c.* and the treading down and conſuming

conſuming of the graſs aforeſaid there growing, with his feet and the feet of his ſervants by walking thereon, and the feeding on, treading down and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading down and conſuming other the graſs aforeſaid there growing with the ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, *replieth*, that he ought not to be precluded from having his ſaid action to be maintained againſt the ſaid *M.* for the ſame, by any thing above pleaded by him thereto, *becauſe* he the ſaid *S.* ſaith, that the ſaid *M.* at the ſaid time in which, *&c.* at the pariſh of *W.* aforeſaid, broke and entered the ſaid cloſe called *Hog-hill*, in which, *&c.* and the ſaid graſs of the ſaid *S.* late growing there, trod down and conſumed with his feet and the feet of his ſervants, by his and their walking thereon, and fed on, trod down and conſumed the ſaid graſs with the ſaid horſes, and the ſaid other graſs of the ſaid *S.* late growing there, with carts and carriages trod down and conſumed, and the earth and ſoil thereof then and there tore and plowed up with the ſaid carts and carriages, of his own wrong, without ſuch cauſe by him the ſaid *M.* above in his ſaid plea alledged; and this the ſaid *S.* prayeth may be inquired of by the country; *and* the ſaid *M.* doth ſo likewiſe: Therefore the ſheriff is commanded, that he cauſe to come here from the day of the holy *Trinity* in three weeks, 12, *&c.* *Iſſue.* Venire *awarded.*

and who neither, &c. to recognize, &c. becauſe as well, &c.

Declaration in treſpaſs for entering plt.'s free chaſe and free warren, hunting and killing game, &c. C. B.

Cumberland, *to wit.* *F. F.* late of, &c. was attached to anſwer to *W. H.* in a plea wherefore he with force and arms entered into the free chace of the ſaid *W.* at *M.* in the county aforeſaid, and without his licence and conſent in the ſame did hunt, and did take, kill and carry away hares, conies, pheaſants and partridges; and alſo wherefore he with force and arms entered into the free warren of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent there did hunt and take, kill and carry away other hares, conies, pheaſants and partridges, and other injuries to him did, to the great damage of the ſaid *W.* and againſt the peace of our lord the king; *and* whereupon the ſaid *W.* by *T. B.* his attorney complaineth, *that* the aforeſaid *F.* on the —— day of —— in the —— year of the reign of his preſent majeſty, and on divers other days and times between that day and the 1ſt day of *March* in the —— year of the reign of his ſaid majeſty, with force and arms, &c. entered into the free chace of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did in the ſame hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheaſants, *to wit*, 20 pheaſants, and partridges, *to wit*, 20 partridges; *and* alſo that the ſaid *F.* on the ſaid ſeveral days and times aforeſaid, with force and arms, &c. entered into the free warren of

of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheaſants, *to wit*, 20 other pheaſants, partridges, *to wit*, 20 other partridges; and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *W.* ſaith, that he is prejudiced, and hath received damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

Declaration in treſpaſs for cutting down plt.'s trees, carrying away the timber, &c. C. B.

Oxfordſhire, *to wit.* } *T. H.* late of, *&c.* was attached to anſwer *T. B.* of a plea, *wherefore* with force and arms he the trees of the ſaid *T. B.* at *C.* aforeſaid growing, to the value of 30*l.* felled and cut down, and the timber and wood therefrom coming and ariſing took, carried away and converted to his own proper uſe, and the underwood and buſhes of him the ſaid *T. B.* at *C.* aforeſaid growing, of the value of other 30*l.* cut down and carried away, and other enormities to him did, to the great damage of the ſaid *T. B.* and againſt the peace of our lord the now king, *&c.* *And whereupon* the ſaid *T. B.* by *R. F.* his attorney complaineth, *That* the ſaid *T. H.* on the 1ſt day of *January* in the year of our Lord 1732. and on ſeveral other days and at ſeveral other times between that day and the 23d day of *April* in the year of our Lord 1737. with force and arms, *&c.* the trees of him the ſaid *T. B.* *to wit*, 100 oaks, 100 aſhes, 100 elms, 100 beeches, and 100 maples,

maples, growing in ſeveral cloſes, called *K. P. B. &c.* at *C.* aforeſaid, to the value, *&c.* felled and cut down, and the timber and wood, *(to wit)* 200 cart-loads of timber, and 200 cart-loads of wood) therefrom coming and ariſing, took, carried away and converted to his own proper uſe, and the underwood and buſhes of him the ſaid *T. B.* (*to wit*, 200 cart-loads of underwood and 200 cart-loads of buſhes) growing in the ſaid cloſes, of the value, *&c.* cut down and carried away; and other enormities, *&c.* to the grievous damage, *&c.* and againſt the peace, *&c.* whereby the ſaid *T. B.* ſaith, he is detrimented and hath ſuſtained damage to the value of 40*l.* and thereof he bringeth this ſuit, *&c.*

Declaration in treſpaſs for ſhooting a greyhound, &c. C. B.

Leiceſterſhire, *to wit.* } *H. R.* late of, *&c.* was attached to anſwer *B. D.* in a plea wherefore with force and arms, a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* at *M.* aforeſaid in *M.* aforeſaid in the county aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the ſaid other bitch, which died for want of the ſaid bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* late found at *M.* aforeſaid, of the price of 10*l.* he ſhot at,

at, hit, ſtruck, ſmote and wounded, by means whereof the laſt mentioned two bitches afterwards at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the ſaid two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five other young whelps of the ſaid laſt mentioned greyhound bitch, and certain other young whelps, *to wit*, five other young whelps of the other of the two laſt mentioned bitches, which afterwards died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſovereign lord the king that now is, *&c.* *And whereupon* the ſaid *B.* by *J. B.* his attorney complaineth, *that* the ſaid *H.* on the 15th day of *January* in the year of our Lord 1736. with force and arms, *&c.* a certain greyhound bitch and a certain other bitch of the ſaid *B.* of the price of 10*l.* then found at *M.* aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the other of the ſaid bitches, which afterwards, *to wit*, the ſame day and year at *M.* aforeſaid, died for want of the ſaid bitches to ſuckle them; *and* a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* then found at *M.* aforeſaid, of the price of 10*l.* ſhot at, hit, ſtruck, ſmote and wounded, by means

whereof the laſt mentioned two bitches afterwards, *to wit*, the ſame day and year, at *M.* aforeſaid died; whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch, and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year, died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is; whereby the ſaid *B.* ſaith, that he is injured and damnified to the value of 10*l.* and thereof he bringeth ſuit, *&c.*

Plea as to part, Not guilty.

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury when, *&c.* *And* as to the coming with force and arms, and the whole treſpaſs aforeſaid above ſuppoſed to be done, except the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith, that he is not guilty; and of this he putteth himſelf upon the country; *and* the ſaid *B.* likewiſe, *&c.*——*And* as to the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him, becauſe he ſaith, that Sir *W. D.* Bart. long before the ſaid time when, *&c.* and at the ſaid time

Iſſue.

As to the reſidue, that the greyhound uſed to haunt a park, and to hunt, &c. *the deer, and being at the time when,* &c. *there for that purpoſe,*

time when, *&c.* was and ſtill is poſſeſſed of and in a certain ancient park called *B. Park* in *M.* aforeſaid, in which ſaid park long before the ſaid time when, *&c.* and at the ſame time when, *&c.* were great numbers of deer, of which park the aforeſaid *H.* before the ſaid time when, *&c.* and at the ſaid time when, *&c.* was keeper, and had the care and cuſtody thereof; and the ſaid Sir *W.* being ſo as aforeſaid poſſeſſed of the ſaid park, the ſaid greyhound bitch at divers times before the ſaid time when, *&c.* was uſed to haunt the ſaid park, and to hunt, chaſe and drive the deer there, in order to bite, wound and kill them, to the great hurt and damage of the ſaid deer; and at the ſaid time when, *&c.* was in the aforeſaid park for the purpoſe aforeſaid; whereupon the aforeſaid *H.* as keeper and ſervant of the aforeſaid Sir *W.* and by his command at the ſaid time when, *&c.* in the ſaid park for the preſervation of the ſaid deer there, did ſhoot at and kill the ſaid greyhound bitch there, as it was lawful for him to do; which is the ſame ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, whereof the ſaid *B.* doth above in that behalf complain againſt him; and this he is ready to verify; whereupon he prayeth judgment if the ſaid *B.* ought to have his aforeſaid action thereof againſt him, *&c.*

deft. as park-keeper juſtifies the ſhooting her.

And the ſaid *B.* as to the ſaid plea of him the ſaid *H.* as to the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration

Replication, that he did it de injuria ſua propria, aſq; tali cauſa.

claration firſt mentioned by him the ſaid *H.* committed above pleaded, in bar ſaith, that he by any thing above alledged by the ſaid *H.* in pleading ought not to be barred from having his ſaid action thereof againſt him, becauſe he ſaith, that true it is, that the ſaid Sir *W. D.* bart. long before the ſaid time when, *&c.* and at the ſaid time when, *&c.* was and ſtill is poſſeſſed of and in the ſaid park called *B. Park* in *M.* aforeſaid, and that within the ſaid park long before the ſaid time when, *&c.* and alſo at the ſame time when, *&c.* there were a great number of deer, and that the ſaid *H.* before the ſaid time when, *&c.* and at the ſaid time when, *&c.* was keeper, and had the care and cuſtody thereof, in manner and form as the ſaid *H.* hath above by his pleading alledged: But the ſaid *B.* further ſaith, that the ſaid *H.* upon the ſaid 15th day of *January* in the ſaid year of our Lord 1736. at *M.* aforeſaid, of his own wrong, and without the reſt of the cauſe by him above alledged, with a gun ſhot at and killed the ſaid greyhound bitch of the ſaid *B.* in the ſaid declaration firſt above mentioned, as the ſaid *B.* above thereof complaineth againſt him; and this he prayeth may be inquired of by the country: *And* the ſaid *H.* likewiſe, *&c.* *Therefore* as well to try this iſſue as the ſaid other iſſue between the parties aforeſaid above joined, the ſheriff is commanded, *&c.*

Iſſue. Venire *awarded.*

Hereford-

Herefordſhire, *to wit.* } *W. H.* late of, *&c.* and *M.* his wife, were attached to anſwer *M. P.* widow, of a plea, wherefore the ſaid *M.* the wife of the ſaid *W.* with force and arms, at *Roſs* in the ſaid county of *H.* took and carried away the corn in the ſtraw of the ſaid *M. P.* of the value of 30 *l.* there lately found, and converted and diſpoſed thereof to the uſe of the ſaid *W.* and other injuries to her did, to the great damage of the ſaid *M. P.* and againſt the peace of our lord the preſent king: *And* whereupon the ſaid *M. P.* by *J. B.* her attorney, complaineth that the ſaid *M.* the wife of the ſaid *W.* on the 20th day of *Auguſt* in the year of our Lord 1736. with force and arms, at *Roſs* aforeſaid, the corn of the ſaid *M. P.* in the ſtraw, that is to ſay, 50 cart-loads of wheat in the ſtraw, 50 cart-loads of rye in the ſtraw, and 50 cart-loads of mongcorn in the ſtraw of the ſaid *M. P.* of the value, *&c.* there lately found, took, carried away, and converted and diſpoſed thereof to the uſe of the ſaid *W.* and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* wherefore ſhe ſaith that ſhe is injured and hath damage to the value of 40 *l.* and thereof ſhe bringeth this ſuit, *&c.*

Declaration in treſpaſs againſt baron and feme for taking away corn in the ſtraw by the wife, and converting it to the huſband's uſe. C. B.

And the ſaid *W.* and *M.* his wife, by *J. K.* their attorney, come and defend the force and injury when, *&c.* *And* as to the coming with force and arms and whatever is againſt the peace of his preſent majeſty, ſay that

Plea, as to part Notguilty.

that the ſaid *M.* the wife of the ſaid *W.* is not guilty thereof as the ſaid *M. P.* hath above complained againſt them; and thereupon they put themſelves upon the country; *and* the ſaid *M. P.* doth ſo likewiſe. *And* as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done by the ſaid *M.* the wife of the ſaid *W.* the ſaid *W.* and *M.* his wife ſay, that the ſaid *M. P.* ought not therefore to have her ſaid action againſt them, becauſe they ſay that the ſaid *M. P.* before the ſaid time when, *&c.* to wit, on the 19th day of *Auguſt* in the year of our Lord 1736. aforeſaid, at *Roſs* aforeſaid, licenſed the ſaid *M.* the defendant to take and carry away the ſaid corn, and to convert and diſpoſe thereof to the uſe of the ſaid *W.* by virtue of which ſaid licence ſhe the ſaid *M.* the defendant afterwards, to wit, at the ſaid time when, *&c.* took and carried away the ſaid corn and converted and diſpoſed thereof to the uſe of the ſaid *W.* her huſband, as it was lawful for her to do; which are the reſidue of the ſaid treſpaſs, of which the ſaid *M. P.* hath above complained againſt them; and this they are ready to verify: Wherefore they pray judgment if the ſaid *M. P.* ought therefore to have her ſaid action againſt them, *&c.*

Iſſue.

As to the reſidue, that the plaintiff licenſed her to take away the corn, &c.

Replication, de injuria ſua propria.

And the ſaid *M. P.* as to the ſaid plea of the ſaid *W.* and *M.* his wife, as to the reſidue of the treſpaſs aforeſaid, done by the ſaid *M.* the wife of the ſaid *W.* above in bar pleaded, ſaith that ſhe the ſaid *M. P.* by reaſon of any thing by the ſaid *W.* and *M.*

in

in the plea aforeſaid above alledged, ought not to be precluded from having her action aforeſaid thereof againſt them, becauſe ſhe the ſaid *M. P.* ſaith that the ſaid *M.* the wife of the ſaid *W.* on the day and year in the ſaid declaration mentioned, of her own wrong, at *Roſs* aforeſaid, the ſaid corn in the ſtraw of the ſaid *M. P.* there lately found, took and carried away and converted and diſpoſed thereof to the uſe of the ſaid *W.* in manner and form as the ſaid *M. P.* hath above complained; *without this*, that the ſaid *M. P.* licenſed the ſaid *M.* the defendant to take and carry away the ſaid corn, and to convert and diſpoſe thereof to the uſe of the ſaid *W.* her huſband, in manner and form as the ſaid *W.* and *M.* his wife in the ſaid plea have above alledged; and this ſhe is ready to verify: Wherefore as the ſaid *W.* and *M.* his wife have above acknowledged the committing of that treſpaſs by the ſaid *M.* the defendant, the ſaid *M. P.* prayeth judgment and her damages aforeſaid, occaſioned by the committing of that treſpaſs, to be adjudged to her, *&c.* *Traverſe.*

And the ſaid *W.* and *M.* his wife ſay as before, that the ſaid *M. P.* licenſed the ſaid *M.* the defendant to take and carry away the ſaid corn, and to convert and diſpoſe thereof to the uſe of the ſaid *W.* her huſband, as the ſaid *W.* and *M.* his wife in their ſaid plea have above alledged; and thereupon they put themſelves upon the country; *and* the ſaid *M. P.* likewiſe: *Therefore*, *&c.* *Rejoinder.* *Iſſue.*

Kent,

Declaration in treſpaſs, clauſum fregit, *treading down the graſs, and cutting down and carrying away trees.* B. R.

Kent, to wit, M. W. complaineth againſt *J. N.* in cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for this, to wit, that the ſaid *J.* on the 10th day of *October* in the year of our Lord 1744, and on diverſe other days and times between that day and the 25th day of *December* then next following, with force and arms, *&c.* the cloſes of the ſaid *M.* that is to ſay, one cloſe called the *Garden*, one other cloſe called the *Morſery ground*, and one other cloſe called the *Fifteen acres*, and one other cloſe of the ſaid *M.* at the pariſh of St. *Nicholas* and in *Deptford* in the ſaid county, he broke and entered, and the graſs of the ſaid *M.* there lately growing, of the value of 40*s.* with his feet in walking trod down and conſumed, and the trees of the ſaid *M.* that is to ſay 500 aſh trees, 500 elm trees, 500 yew trees, 500 apricot trees, 500 peach trees, 500 nectarine trees, 500 apple trees, 500 pear trees, 500 plumb trees, 500 cherry trees, 500 gooſeberry trees, and 500 curran trees of the value of 200*l.* there lately growing, felled, cut down, dug up, took and carried away and converted and diſpoſed thereof to his own uſe; and other injuries to her then and there did, againſt the peace of our lord the preſent king, and to the damage of the ſaid *M.* 300*l.* and thereof ſhe bringeth ſuit, *&c.* Pledges, *&c.*

Hil. 36, 37 *Car.* 2. C. B. 1742.

Yorkſhire, to wit, *E. L.* late of *Marr* in the county aforeſaid widow, was attached to anſwer *G. N.* gent. in a plea, wherefore with force and arms, into the manor of *Marr*, with the appurtenances, and into 20 meſuages, 10 cotages, 400 acres of arable land, 400 acres of meadow, and 400 acres of paſture, with the appurtenances of the ſaid *G.* ſituate, lying and being in *Marr*, *Bently* and *Thorpe* in *Balne*, ſhe broke and entered, and him the ſaid *G.* from the poſſeſſion and occupation of the manor and tenements aforeſaid, with the appurtenances, from the ſecond day of *October* in the 32d year of the reign of our lord the preſent king, until the 4th day of *March* in the 35th year of the reign of our ſaid lord the preſent king, expelled and amoved; and ſhe the ſaid *E.* the whole profits of the manor and tenements aforeſaid, from the ſaid 2d day of *October* in the 32d year aforeſaid until the 4th day of *March* in the 35th year aforeſaid, to the uſe of the ſaid *E.* had and received; whereby the ſaid *G.* the whole profit, benefit and advantage of the manor and tenements aforeſaid by the whole time aforeſaid loſt, and the ſaid *G.* from the receipt of the profits of the manor and all the tenements aforeſaid by reaſon thereof was hindered, and other injuries to him did, to the great damage of the ſaid *G.* and againſt the peace of our lord the preſent king, *&c.* And whereupon the ſaid

Declaration in treſpaſs for the recovery of meſne profits. C. B. Brownl. Ent. 493.

ſaid *G.* by *W. D.* his attorney complaineth that the ſaid *E.* on the 2d day of *October* in the 32 year of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* with force and arms, *&c.* into the manor of [*as before to*] was hindered, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon he ſaith, that he is the worſe and hath damage to the value of 600 *l.* and thereof he bringeth ſuit, *&c.*

Plea.

Not guilty to part.

And the ſaid *E.* by *C. D.* her attorney, cometh and defendeth the force and injury when, *&c.* *And as to* coming with force and arms, or whatever that is againſt the peace of our ſaid lord the preſent king, and alſo the whole treſpaſs aforeſaid, except in one meſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, with the appurtenances in *Marr* aforeſaid, parcel of the tenements in the declaration aforeſaid ſpecified; and as to any treſpaſs in the ſaid meſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, with the appurtenances, in and before the 23d day of *January* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* ſhe the ſaid *E.* ſaith that ſhe is not guilty thereof; and of this ſhe putteth herſelf upon the country; *and* the ſaid *G.* likewiſe, *&c.* *And* as to the ſaid treſpaſs in the ſaid one meſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow with the appurtenances above ſuppoſed to be done, the ſaid *E.* ſaith, that the ſaid *G.* ought

Iſſue.

As to the reſidue.

ought not to have or maintain his ſaid action thereof againſt her, becauſe ſhe ſaith that long before the ſaid *G.* had any thing in the tenements laſt mentioned, with the appurtenances, to wit, on the 10th day of *June* in the year of our Lord 1674, one *E. L.* gent. was ſeiſed of the tenements with the appurtenances laſt mentioned, in his demeſne as of fee. And the ſaid *E.* being ſo thereof ſeiſed, before the ſaid time in which, *&c.* to wit, on the 10th day of *Auguſt* in the year of our Lord 1674, at *Marr* in the county aforeſaid, made his teſtament and laſt will in writing, and thereby willed and deviſed the ſaid tenements with the appurtenances to *E. L.* now the wife of *Theophilus* earl of *Huntingdon*, and *M. L.* deceaſed, late the wife of *Robert* earl of *Scarſdale*, and to their heirs for ever; *And* afterwards, to wit, on the day and year laſt mentioned, there died ſeiſed of the ſaid tenements, with the appurtenances in form aforeſaid. *After* whoſe death, to wit, on the 24th day of *January* in the 32d year aforeſaid, the ſaid *E.* and *M.* into the ſaid tenements, with the appurtenances laſt mentioned, entered, and were thereof ſeiſed in their demeſne as of fee, by virtue of the ſaid deviſe; and being ſo thereof ſeiſed, the ſaid *E.* then at *Marr* aforeſaid took for her huſband the ſaid *Theophilus*, earl of *Huntingdon*, and the ſaid *M.* then and there took for her huſband the ſaid *Robert*, earl of *Scarſdale*, whereby the ſaid earl of *Huntingdon* and *E.* in the right of the ſaid *E.* and the ſaid earl of *S.* and *M.* in the right of the ſaid *M.* on

That long before plaintiff had any thing in the tenements, one E. L. *was ſeiſed thereof in fee, and deviſed them to* E. *wife of* T. *earl of* H. *and* M. *late wife of* R. *earl of* S. *and their heirs for ever.*

E. L. *dies ſeiſed.*

E. *and* M. *enter.*

E. *marries* T. *earl of* H.

M. *marries* R. *earl of* S.

the ſaid 24th day of *January* in the year aforeſaid were ſeiſed of the tenements aforeſaid laſt mentioned, with the appurtenances, in their demeſne as of fee. *And* the ſaid *G.* claiming the ſaid tenements, with the appurtenances, by colour of a certain deed of feoffment to him and his heirs thereof made by the ſaid *E. L.* before the day of the making the ſaid teſtament, when nothing of the ſaid tenements, with the appurtenances, ever paſſed into the poſſeſſion of the ſaid *G.* by the ſaid deed of feoffment, after the death of the ſaid *E. L.* to wit, on the 24th day of *January* in the 32d year aforeſaid entered into the ſame tenements with the appurtenances. *Upon* which ſaid poſſeſſion of the ſaid *G.* thereof the ſaid *E. L.* now defendant, by the command of the ſaid earl of *H.* and earl of *S.* on the ſame 24th day of *January* into the ſaid tenements laſt mentioned, with the appurtenances, re-entered, and the ſaid *G.* from the poſſeſſion and occupation of the ſame tenements, with the appurtenances, then expelled and amoved; and the profits of the ſame tenements laſt mentioned from thence for all the reſidue of the ſaid time in the ſaid declaration mentioned had and received, as ſhe well might, which are the ſame reſidue of the ſaid treſpaſs, whereof the ſaid *G.* above now complaineth; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment if the ſaid *G.* ought to have or maintain his ſaid action thereof againſt her, *&c.*

Colour given to the plaintiff, who enters.

Defendant by command of the earl of H. *and the earl of* S. *enters on plaintiff.*

And

And the ſaid *G.* ſaith that the ſaid *E.* ought not to be admitted to the plea in bar above pleaded, as to the ſaid meſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, becauſe he ſaith that after the ſaid time in the ſaid declaration mentioned, in which the ſaid treſpaſs in the ſaid declaration above is ſuppoſed to be done by the ſaid *E.* heretofore, to wit, in the term of St. *Hilary* in the 32d and 33d years of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* in the court of our ſaid lord the preſent king before the then juſtices of our ſaid lord the king of the bench (the ſame court being then at *Weſtminſter* in the county of *M.)* the ſaid *E.* by the name of *E. L.* late of *Marr* widow, and one *W. H. G. G. R. H. M. V. J. H.* and *J. S.* were attached to anſwer the ſaid *G. N.* in a plea, wherefore with force and arms the manor of *Marr*, with the appurtenances, and 20 meſuages, 10 cotages, 400 acres of land, 400 acres of meadow, and 400 acres of paſture, with the appurtenances in *Marr*, *Bentley* and *Thorpe* in *Balne* in the county of *York*, which *B. G.* eſq; and *A.* his wife had demiſed to the ſaid *G.* for a term which was not then paſſed, they entered, and him the ſaid *G.* from his ſaid farm ejected, and other injuries to him did, to the great damage of the ſaid *G. N.* and againſt the peace of our ſaid lord the preſent king; and whereupon the ſaid *G. N.* by *T. P.* then his attorney complained, that whereas the ſaid *B.* and *A.* on the 1ſt day of *October* in the 32d year of

Replication, defendant ad placitum præd' admitti non debet.

In Hil. 32 & 33 Car. II.

Plaintiff as leſſee of B. G. *and* A. *his wife brought ejectment againſt defendant and ſix others.*

the reign of our ſaid lord the king at *Marr* aforeſaid, had demiſed to the ſaid *G. N.* the manor and tenements aforeſaid, with the appurtenances, to have and to hold the manor and tenements aforeſaid, with the appurtenances, to the ſaid *G.* and his aſſigns, from the feaſt day of St. *Michael* the archangel then laſt paſt, until the full end and term of 5 years then next following and fully to be complete and ended; by virtue of which ſaid demiſe the ſaid *G. N.* had entered the manor and tenements aforeſaid, with the appurtenances, and was thereof poſſeſſed, and being ſo thereof poſſeſſed, the ſaid *E. W. G. G. R. M. J.* and *J.* afterwards, to wit, on the ſaid 1ſt day of *October* in the 32d year aforeſaid, with force and arms, *&c.* the manor and tenements aforeſaid, with the appurtenances in form aforeſaid demiſed to the ſaid *G. N.* for a term which was not then paſſed, had entered, and him from his ſaid farm had ejected; and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Wherefore he then ſaid that he was injured, and had damage to the value of 100*l.* and thereof he then brought ſuit, *&c.* *And* the ſaid *E. W. G. G. R. M. J.* and *J.* by *T. L.* then their attorney, came and defended the force and injury when, *&c.* and then ſaid that they were in nothing guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *G. N.* above declared againſt them, and of that they then put themſelves upon the country; and the ſaid *G. N.* then did ſo likewiſe. *And* thereupon the ſaid proceſs was

Who pleaded Not guilty.

Proceſs continued.

was in ſuch manner continued between the parties aforeſaid, in the plea aforeſaid, by the jurors being reſpited between them until from the day of *Eaſter* in 15 days then next following, unleſs the juſtices of our lord the king aſſigned to take the aſſiſes in the county aforeſaid, according to the form of the ſtatute, to wit, on *Saturday* the 5th day of *March* then next before the ſaid day, to wit, from the day of *Eaſter* in 15 days, at the caſtle of *York* in the county of *York* aforeſaid, had firſt come; at which ſaid aſſiſes, on the day and at the place aforeſaid held before Sir *William Dolben* knt. one of the juſtices of our ſaid lord the king aſſigned to hold pleas before the king himſelf, and Sir *William Gregory* knt. one of the barons of the exchequer of our ſaid lord the king, juſtices of our lord the king aſſigned to take the aſſizes in the county aforeſaid of *York*, the ſaid iſſue was tried, and the jurors then and there choſen, tried and ſworn to try the ſaid iſſue, ſaid upon their oath, that *E. W. G. G. R. M. J.* and *J.* were guilty of the treſpaſs and ejectment aforeſaid, in manner and form as the ſaid *G. N.* complained againſt them; *And* thereupon it was in ſuch manner proceeded, that it was conſidered by the ſame court of the bench, that the ſaid *G. N.* recovered againſt the ſaid *E. W. G. G. R. M. J.* and *J.* the poſſeſſion of his ſaid term in the manor and tenements aforeſaid, with the appurtenances, then to come; and that the ſaid *E. W. G. G. R. M. J.* and *J.* ſhould be taken, as by the record of ſaid recovery

Niſi Prius.

Trial.

Verdict for plaintiff.

And judgment.

now remaining in the court of the bench aforeſaid more fully appeareth: *And* the ſaid *G. N.* further ſaith, that the ſaid meſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, whereof the ſaid *G. N.* now complaineth againſt the ſaid *E.* are parcel of the meſuages, land and tenements mentioned in the ſaid recovery, and not other nor different: Wherefore the ſaid *G. N.* prayeth judgment if the ſaid *E.* during the ſaid term in the ſaid record mentioned ought to be admitted to the ſaid plea, contrary to the ſaid recovery.

Rejoinder, That the earls in right of their wives were ſeiſed, and defendant as their ſervant entered, &c.

And the ſaid *E.* as at firſt ſaith, that the ſaid *T.* earl of *H.* and *E.* his wife in the right of the ſaid *E.* and the ſaid *R.* earl of *S.* and *M.* his wife in the right of the ſaid *M.* on the 24th day of *January* in the 32d year aforeſaid, and continually afterwards, until the 4th day of *March* in the ſaid 35th year of the reign of the lord *Charles* II. late king of *England*, *&c.* were ſeiſed in their demeſne, as of fee, of the tenements aforeſaid, with the appurtenances laſt mentioned, in manner and form aforeſaid, as the ſaid *E.* above in pleading hath alledged; and that ſhe the ſaid *E. L.* as ſervant of the ſaid earls and their wives entered into the tenements aforeſaid, with the appurtenances, and held the ſame, as ſhe the ſaid *E. L.* above in pleading hath alledged: Wherefore for that the ſaid *G. N.* hath not denied the ſaid matter pleaded in bar by the ſaid *E.* nor anſwered thereto, the ſaid *E. L.* prayeth judgment,

and

and that the ſaid *G. N.* may be precluded from his ſaid action, *&c.*

And the ſaid *G.* as to the ſaid plea of the ſaid *E.* above in rejoining pleaded, ſaith, that that plea in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to preclude the ſaid *G.* from having his ſaid action againſt the ſaid *E.* to which the ſaid *G.* has no need, nor is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient plea of the ſaid *E.* in this behalf the ſaid *G.* prayeth judgment and his ſaid damages, by the occaſion aforeſaid, to be adjudged to him, *&c.* *Demurrer.*

And the ſaid *E.* ſaith, that her ſaid plea in manner and form aforeſaid above in rejoining pleaded, and the matter therein contained, are good and ſufficient in law to preclude the ſaid *G.* from having his ſaid action againſt the ſaid *E.* Which ſaid plea, and the matter therein contained, the ſaid *E.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *G.* hath not anſwered to the ſaid plea, nor any ways hitherto denied the ſame, the ſaid *E.* as at firſt, prayeth judgment; and that the ſaid *G.* may be precluded from having his ſaid action againſt the ſaid *E. &c.* *And* becauſe the juſtices here will adviſe themſelves of and upon the premiſes, whereof the ſaid parties have put themſelves upon the judgment of the court, before they give judgment thereupon, day is given to the parties aforeſaid here, until *Joinder.* *Continuance.*

from the day of *Eaſter* in 15 days, to hear their judgment thereupon; for that the ſaid
Unica taxatio. juſtices here are not yet, *&c.* *And* becauſe it is convenient that one taxation be made of the damages for the whole treſpaſs in one
Ven. fac. tam ad triand. quam ad inquirend'. writ ſpecified: *Therefore* as well to try the ſaid iſſue above joined to be tried by the country, as to inquire of the damages by occaſion of the premiſes, whereof the ſaid parties have put themſelves upon the judgment of the court as aforeſaid, if judgment thereupon ſhall happen to be given for the ſaid *G.* *It is commanded* to the ſheriff that he cauſe to come here on the octave of the Purification of the Bleſſed *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize,
Jury reſpited. *&c.* becauſe as well, *&c.* *At which day* the jury between the parties aforeſaid in the plea aforeſaid above by the country to be tried, was thereupon reſpited between them here until this day, *to wit*, to the ſaid 15 days of *Eaſter* then next following, unleſs the juſtices of our lord the king aſſigned to take the aſſizes in the county aforeſaid, by form of the ſaid ſtatute, on *Monday* the 9th day of *March* laſt paſt at the caſtle of *York* in the county aforeſaid ſhall firſt come. *And now here* at this day cometh as well the ſaid *G.* as the ſaid *E.* by their attornies aforeſaid; and the ſaid juſtices of aſſize, before whom, *&c.* ſent here their record in theſe words:
Poſtea. *Afterwards*, on the day and at the place within contained, before Sir *Edward Atkins*, knight, one of the Barons of the *Exchequer* of our lord the king, and Sir *Robert Wright*, knt.

knt. one other of the Barons of the *Exchequer* of our ſaid lord the king, juſtices of our ſaid lord the king aſſigned to take the aſſizes in the county of *York*, by form of the ſtatute, *&c.* cometh as well the within named *G. N.* as the within-written *E. L.* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, ſome of them, to wit, *G. R. T. P. G. B. R. T. C. R. W. P.* and *J. S.* came and were ſworn on that jury; and becauſe the reſidue of the jurors of that jury did not appear, *Therefore* others of thoſe ſtanding around, by the ſheriff of the county aforeſaid hereunto choſen at the requeſt of the ſaid *G. N.* and by the command of the ſaid juſtices, are added a-new, whoſe names are affiled in the within-written panel, according to the form of the ſtatute in ſuch caſe made and provided; and the jurors ſo added a-new, to wit, *W. P. M. W. J. H. J. D.* and *J. P.* being demanded, alſo come, who to ſpeak the truth of the within contents, together with the ſaid other jurors firſt impanelled and ſworn, being choſen, tried and ſworn, *As to the* iſſue between the parties aforeſaid within joined, whereof the ſaid *E.* ſaid that ſhe is not guilty thereof, they ſay upon their oath, that the ſaid *E.* is guilty thereof in manner and form as the ſaid *G.* within complains againſt her; and they aſſeſs the damages of the ſaid *G.* by occaſion thereof, over and above his coſts and charges by him about his ſuit in this behalf expended, to 300*l.* *And as to* the reſidue of the treſpaſs within mention-

Al' de circumſtantibus.

Verdict for the plaintiff.

Contingent damages on the demurrer.

mentioned, whereof the ſaid parties have within put themſelves on the judgment of the court, if it happens that judgment therein be given for the ſaid *G.* againſt the ſaid *E.* the ſaid jury aſſeſs the damages of the ſaid *G.* by the occaſion of that treſpaſs, over and above his coſts and charges by him in and about his ſuit in this behalf expended, to 200 *l.* and for thoſe coſts and charges to 40*s.*

Continuance. *And* becauſe the juſtices here will further adviſe themſelves of and upon all and ſingular the ſaid premiſes before they give judgment thereon, day is further given to the parties aforeſaid here until on the morrow of the holy *Trinity*, to hear their judgment thereupon, for that the ſaid juſtices here are not

Continuance. yet, *&c. At which day* here came as well the ſaid *G.* as the ſaid *E.* by their attornies aforeſaid, and becauſe the juſtices here will further adviſe themſelves of and upon all and ſingular the premiſes aforeſaid before they give judgment thereon, day is further given to the ſaid parties here until from the day of St. *Michael* in three weeks, to hear their judgment thereon, for that the ſaid juſtices

Judgment for the plt. on the demurrer, &c. here are not yet, *&c. At which day* here cometh as well the ſaid *G.* as the ſaid *E.* by their attornies aforeſaid; whereupon all and ſingular the ſaid premiſes being ſeen, and by the court here fully underſtood, it ſeemeth to the ſaid juſtices that the plea of the ſaid *E.* in manner and form aforeſaid above in rejoining pleaded, and the matter therein contained, are not ſufficient in law to preclude the ſaid *G.* from having his ſaid action,

as

as the ſaid *G.* within hath alledged, *It is conſidered*, that the ſaid *G.* recover againſt the ſaid *E.* his ſeveral damages aforeſaid to 500 *l.* and the ſaid 40 *s.* aſſeſſed by the ſaid jury in form aforeſaid, and alſo 28 *l.* to the ſaid *G.* at his requeſt for his ſaid coſts and charges by the court here of increaſe adjudged, which ſaid damages in the whole amount to 530 *l.* and the ſaid *E.* be taken, *&c.*

Affirmed on error.

Glouceſterſhire, *to wit.* } *C. W.* eſq; was attached to anſwer *T. J.* eſq; of a plea, wherefore whereas the ſaid *T.* by the ſpace of ſeven years now laſt paſt was and ſtill is ſeiſed in his demeſne as of fee, of and in one capital meſuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, aſhes, elms and beeches, lying contiguous to the ſame meſuage, with the appurtenances, in the pariſh of *Lydney* in the county aforeſaid, which ſaid grove was not only an ornament, but alſo a defence to the ſaid meſuage againſt winds, ſtorms and tempeſts, the ſaid *C.* contriving and intending to deprive the ſaid *T.* of the benefit and advantage of the ſaid grove, with force and arms entered into the ſaid grove, and cut down and carried away trees to the value of 400 *l.* then growing there, and did other injuries to the ſaid *T.* to the great damage of the ſaid *T.* and againſt the peace of our lord the preſent king, *&c.* *And whereupon* the ſaid *T.* by *E. J.* who is admitted by the court of our lord the king here to proſecute for

Declaration in treſpaſs for cutting down a grove which was an ornament and defence to a meſuage. C. B.

Plt. an infant by prochein amy.

for the ſaid *T.* being under the age of 21 years, as next friend of the ſaid *T.* complaineth that *whereas* the ſaid *T.* by the ſpace of ſeven years now laſt paſt was and ſtill is ſeiſed in his demeſne as of fee of and in one capital meſuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, aſhes, elms and beeches, lying contiguous to the ſaid meſuage, with the appurtenances, in the pariſh of *Lydney*, in the county aforeſaid; which ſaid grove was not only an ornament to the ſaid meſuage, but alſo a defence to the ſaid meſuage againſt winds, ſtorms and tempeſts, the ſaid *C.* malicioufly contriving and intending to deprive the ſaid *T.* of the benefit and advantage of the ſaid grove, on the —— day of, *&c.* with force and arms entered into the ſaid grove, and cut down and carried away the trees then growing there, *to wit*, 200 oaks, 200 aſhes, 200 elms, and 200 beeches, to the value of 400 *l.* in continuing the ſaid treſpaſs at divers days and times from the ſaid —— day of, *&c.* until the day of ſuing forth the original writ of the ſaid *T.* *to wit*, the —— day of, *&c.* and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* wherefore he ſaith, that he is injured and hath damage to the value of 1000 *l.* and thereof he bringeth ſuit, *&c.*

Declaration in treſpaſs againſt baron and feme for cutting down

Carmarthenſhire, *to wit.* *JOHN L. M.* eſq; debtor of his preſent majeſty cometh before the barons of this exchequer the 11th day of *July* in this term by *P. B.* his attorney,

torney, and complaineth by bill againſt *W. E.* and *M.* his wife, preſent here in court the ſame day, of a plea of treſpaſs, for that the ſaid *Mary* on the firſt day of *November* in the year of our Lord 1751. and at divers other days and times between that day and the day of exhibiting this bill, with force and arms, *&c.* 30 oaks, 30 elms, 30 aſh trees, and 30 aſpin trees of the ſaid *John*, of the value of 40*l.* at the pariſh of *Lanſhexham* in the county of *Carmarthen* there ſtanding and growing, did then and there fell, cut down, take and carry away; *and* for that the aforeſaid *Mary* on the ſaid firſt day of *November* in the ſaid year of our Lord 1751. with force and arms, *&c.* 20 cartloads of timber, 20 cartloads of wood, and 20 cartloads of underwood of the ſaid *John* of the value of 50*l.* at the pariſh aforeſaid there found, did then and there take and carry away, and other wrongs to the ſaid *John* then and there did to the great damage of the ſaid *John*, and againſt the peace of his ſaid preſent majeſty; whereupon the ſaid *John* ſaith that he is injured, and hath damage to the value of 100*l.* whereby he is the leſs able to ſatisfy his ſaid majeſty the debts which he owes him at his ſaid exchequer; and thereof he bringeth ſuit, *&c.*

and carrying away trees. Scac'.

Second count for taking and carrying away ſeveral cartloads of timber.

Pledges to proſecute { *John Doe* and *Richard Roe.*

Surry,

Declaration in treſpaſs, aſſault and impriſonment. B. R.

Surry, *to wit.* *T. B.* complains of *T. C.* in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king before the king himſelf, for that the ſaid *T. C.* on the 12th day of *January* in the year of our Lord 1747. with force and arms, *to wit*, with ſwords, ſtaves and knives aſſaulted the ſaid *T. B.* at *Guilford* in the county aforeſaid, and beat, wounded and ill treated him, ſo that his life was greatly deſpaired of, and impriſoned the ſaid *T. B.* there, and kept him detained there in priſon for a long time, *to wit*, for the ſpace of two days; and alſo for that the ſaid *T. C.* afterwards, *to wit*, on the ſaid 12th day of *January* in the year aforeſaid, with force and arms, *to wit*, with ſwords, ſtaves and knives, again aſſaulted the ſaid *T. B.* at *G.* aforeſaid, and beat, wounded and ill treated him, ſo that his life was greatly deſpaired of, and did other wrongs to the ſaid *T. B.* againſt the peace of the ſaid lord the now king, *&c.* to the damage of the ſaid *T. B.* of 100*l.* and therefore he bringeth his ſuit, *&c.*

Second count for another aſſault.

Plea, Not guilty.

And the ſaid *T. C.* by *A. B.* his attorney, cometh and defendeth the force and injury, when, *&c.* and ſaith, that he is not guilty of the treſpaſſes aforeſaid, as the ſaid *T. B.* above complaineth againſt him the ſaid *T. C.* and of this he putteth himſelf upon the country; and the ſaid *T. B.* doth likewiſe the ſame. And the ſaid *T. C.* for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, accor-

Iſſue.

And Not guilty within four years.

ding

ding to the form of the ſtatute in ſuch caſes made and provided, further ſaith, that the ſaid *T. B.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith that he is not guilty of the ſaid treſpaſſes, or any of them within four years next before the exhibiting the ſaid bill of the ſaid *T. B.* and this the ſaid *T. C.* is ready to verify: Wherefore he prayeth judgment if the ſaid *T. B.* ought to have or maintain his ſaid action againſt him, *&c.*

R. Draper.

Replication, that when cauſe of action accrued defendant was beyond ſea, and plaintiff exhibited his bill within four years after defendant's firſt arrival into this kingdom. Stat. 4 & 5 Ann. c. 16. §.

And the ſaid *T. B.* as to the ſaid latter plea of the ſaid *Thomas Cleland* above pleaded in bar ſaith, that he by any thing in that plea contained ought not to be barred from having his aforeſaid action thereof maintained againſt the ſaid *T. C.* becauſe he ſaith, that he the ſaid *T. C.* at the time when the ſaid cauſe of action accrued to the ſaid *T. B.* was abroad and beyond the ſeas, *to wit*, in the *Weſt Indies*; and that the ſaid *T. C.* afterwards, *to wit*, on the firſt day of *Auguſt* in the year of our Lord 1744. arrived from parts beyond the ſeas aforeſaid in this kingdom, *to wit*, at *Guilford* aforeſaid, which ſaid arrival of the ſaid *T. C.* into this kingdom was the firſt and next arrival of the ſaid *T. C.* into this kingdom after the ſaid cauſe of action ſo accrued to the ſaid *T. B.* And the ſaid *T. B.* further ſaith, that he the ſaid *T. B.* exhibited his ſaid bill againſt the ſaid *T. C.* within four years next after the ſaid *T. C.* his ſaid firſt arrival into this kingdom;

kingdom; and this he is ready to verify: Wherefore he prayeth judgment, and his damages on occaſion of the premiſes to be adjudged to him, *&c.* *E. G.*

Rejoinder. And the ſaid *T. C.* ſays, that true it is, that at the ſaid times when the above treſpaſſes are above ſuppoſed to have been committed, he the ſaid *T. C.* was abroad beyond the ſeas, *to wit*, in the *Weſt Indies*, as in the ſaid replication is above alledged; but the ſaid *T. C.* further ſaith, that afterwards and long before the ſaid firſt day of *Auguſt* in the ſaid year 1744. *to wit*, on the firſt day of *Auguſt* in the year of our Lord 1742. he the ſaid *T. C.* firſt arrived from the ſaid parts beyond the ſeas into this kingdom after the ſaid cauſes of action accrued, *to wit*, at *Guilford* aforeſaid; without this that the ſaid *T. B.* exhibited his ſaid bill againſt him the ſaid *T. C.* within four years next after the ſaid *T. C.*'s firſt arrival into this kingdom, in manner and form as the ſaid *T. B.* hath in his ſaid replication above alledged; and this he is ready to verify: Wherefore as before he prays judgment, and that the ſaid *T. B.* may be barred from having his ſaid action in this behalf againſt him, *&c.* *R. Draper.*

Traverſt.

Declaration for an aſſault and impriſonment. B. R.

Middleſex, *to wit.* *Joſeph Bliſs* complains of *Robert Rawlings* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf being, for this, that the ſaid *R.* on the 20th day of *October* in the year of our Lord 1736. with force

force and arms, *to wit*, with ſwords, ſtaves and knives upon him the ſaid *J.* at *Weſtminſter* in the ſaid county of *M.* made an aſſault and him did beat, wound and impriſon, and evilly treat, ſo that of his life it was greatly deſpaired, and alſo without any reaſonable cauſe, againſt the laws and cuſtoms of this kingdom, and againſt the peace of our ſovereign lord the now king, then and there did impriſon the ſaid *J.* and for a long time, that is to ſay, for the ſpace of two days detained him in priſon, and other wrongs to him then and there did, to the great damage of the ſaid *J.* and againſt the peace of our ſovereign lord the now king; whereby the ſaid *J.* ſaith that he is prejudiced and hath damage to the value of 30*l.* and thereof he brings ſuit, *&c.*

And the ſaid *R.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the coming with force and arms, and whatſoever is againſt the peace of our ſovereign lord the now king, and all the treſpaſs above ſuppoſed to be done, except the ſaid aſſault upon him the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon for the time mentioned in the ſaid declaration, ſays, that he is not guilty thereof; and of this he puts himſelf upon the country; *and* the ſaid *J.* does ſo likewiſe. *And* as to the ſaid aſſault upon the ſaid *J.* and the beating, impriſoning and evilly treating him and detaining him in priſon above ſuppoſed to be done, the ſaid *R.* ſaith, that

Plea as to part, Not guilty.

Iſſue.

As to the reſidue a juſtification under proceſs of the palace court at

defendant's ſuit. that the ſaid *J.* ought not to have or maintain his ſaid action therefore againſt him, becauſe he ſaith, that before the ſaid time, when, *&c. to wit*, at the court of record of his preſent majeſty of his palace at *Weſtminſter*, held at *Southwark* in the county of *Surry* within the juriſdiction of that court, on *Friday* the 8th day of *October* in the 10th year of the reign of his preſent majeſty king *George* the ſecond, before *William* duke of *Devonſhire*, ſteward of the king's houſhold, Sir *Philip Meadows*, knt. marſhal of the ſaid houſhold, and Sir *Thomas Abney*, knt. ſteward of that court, then judges of the ſame court by virtue of the *Letters Patent* of *Charles* the ſecond, late king of *England*, bearing date at *Weſtminſter* the fourth day of *October* in the 16th year of his reign, the ſaid *R. R.* levied a certain plaint againſt the ſaid *J.* of a plea of treſpaſs on the caſe to his damage of 10*l.* for a cauſe of action ariſing at *Weſtminſter* aforeſaid within the juriſdiction of that court, and then and there found pledges of proſecuting the ſame plaint, *to wit*, *John Doe* and *Richard Roe*, and prayed proceſs of the ſame court to be made againſt the ſaid *J.* upon the ſaid plaint; and thereupon ſuch proceedings were had in the ſame court on the ſaid plaint ſo levied as aforeſaid, that afterwards, *to wit*, at the ſaid court of record of his ſaid majeſty of his palace at *Weſtminſter*, held at *Southwark* aforeſaid within the juriſdiction of that court, on *Friday* the 15th day of *October* in the 10th year aforeſaid before the ſaid *W.* duke

Letters patent dated 4 Oct. 16 Car. 2.

Taliter proceſs.

duke of *D.* ſteward of the king's houſhold aforeſaid, Sir *P. M.* knt. marſhal of ſaid houſhold, and Sir *T. A.* knt. ſteward of that court, then judges of the ſame court by virtue of the letters patent aforeſaid, there iſſued out of the ſame court a certain writ of his ſaid majeſty, directed to the bearers of the verge of his ſaid majeſty's houſhold, the officers and miniſters of that court, and every of them, that they, or any one of them, ſhould take the ſaid *J. B.* and *John Doe*, if they ſhould be found within the juriſdiction of the ſaid court, and them ſafely keep, ſo that they, or one of them, might have their bodies before the judges of the ſame court at the then next court of his ſaid majeſty's palace at *Weſtminſter* aforeſaid, on *Friday* the 22d day of *October* then next following, to be held at *Southwark* aforeſaid in the ſaid county of *S.* to anſwer to the ſaid *Robert* of the ſaid plea of treſpaſs on the caſe, to his damage of 10 *l.* and that they or one of them ſhould have there then that writ; and the ſaid *R.* afterwards, and before the return of the ſaid writ, and before the ſaid time, when, *&c. to wit*, on the ſaid 20th day of *October* at *Weſtminſter* aforeſaid, delivered the ſaid writ to one *W. Kirk*, being then and continually afterwards, and at the return thereof one of the bearers of the verge of his ſaid majeſty's houſhold, and an officer and miniſter of the ſaid court of his ſaid majeſty's palace at *Weſtminſter*, and requeſted him the ſaid *W.* to execute the ſame in due form of law, by virtue of which ſaid writ

the ſaid *W. K.* afterwards and before the return thereof, *to wit*, at the ſaid time, when, *&c.* at *Weſtminſter* aforeſaid, and within the juriſdiction of the ſaid court of his majeſty's palace at *Weſtminſter*, at the requeſt of the ſaid *R.* gently laid his hands on the ſaid *J.* to arreſt him by virtue of that writ, and then and there arreſted him by virtue of the ſaid writ, and kept him in cuſtody there for the time mentioned in the ſaid declaration (for want of ſufficient bail for his appearance according to the exigency of the ſaid writ) ſo that the ſaid *W. K.* might have his body before the ſaid judges mentioned in the ſaid writ at the return thereof, to anſwer to the ſaid *R.* in his plea aforeſaid; and the ſaid *W. K.* at the ſaid then next court of our ſaid lord the king of his palace at *Weſtminſter*, held before the above named judges of the ſaid court at *Southwark* aforeſaid in the ſaid county of *S.* within the juriſdiction of the ſaid court, on *Friday* the 22d day of the ſaid month of *Octōber*, returned upon the ſaid writ to the ſaid judges of the ſaid court that he had took the body of the ſaid *J.* and that he had the ſame ready at the day and place in the ſaid writ mentioned, as by the ſaid writ he was commanded; which are the ſame aſſault upon the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon for the time mentioned in the ſaid declaration, whereof the ſaid *J.* above complains againſt the ſaid *R.* and this he is ready to verify: Wherefore he prays judgment if

the ſaid *J.* ought to have or maintain his ſaid action therefore againſt him, *&c.*

T. D.

Replication de injuria ſua propria.

And the ſaid *J.* to the ſaid plea of the ſaid *R.* as to the ſaid aſſault upon the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon aforeſaid, ſaith, that the ſaid *J.* ought not to be precluded from having his ſaid action to be maintained againſt the ſaid *R.* for the ſame, becauſe he ſaith, that he the ſaid *R.* at the ſaid time, when, *&c.* at *Weſtminſter* aforeſaid, of his own wrong made an aſſault upon him the ſaid *J.* and then and there beat, wounded, impriſoned, and evilly treated the ſaid *J.* and detained him in priſon during the time aforeſaid, without any ſuch cauſe by him the ſaid *R.* at the time of his levying the plaint by him the ſaid *R.* againſt the ſaid *J.* above mentioned in the ſaid plea; or any cauſe of action againſt the ſaid *J.* ariſing within the juriſdiction of his ſaid majeſty's palace court, in manner and form as the ſaid *R.* hath above in pleading alledged; and this the ſaid *J.* is ready to verify: Wherefore he prays judgment, and his damages by occaſion of the premiſes to be adjudged to him, *&c.*

J. M.

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